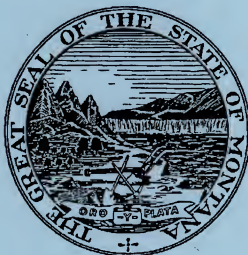


S
632.95
ATMPA
2003

**MONTANA PESTICIDE ACT
AND
ADMINISTRATIVE RULES**



**STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
PO BOX 200201
HELENA, MONTANA 59620-0201
(406) 444-5400
e-mail: www.agr.mt.gov**

Montana State Library



3 0864 1006 2817 4

**MONTANA DEPARTMENT OF AGRICULTURE
AGRICULTURAL SCIENCES DIVISION
HELENA, MONTANA**

**TITLE 80, CHAPTER 8
SECTIONS
80-8-101 THROUGH 80-8-405
MONTANA PESTICIDES ACT**

**GREGORY H. AMES
ADMINISTRATOR**

**NANCY K. PETERSON
DIRECTOR**

OCTOBER 2003

Disclaimer

This document contains a copy of the statutes relating to the subject matter. Although every attempt is made to ensure that the information placed in this document is accurate and timely, the Department of Agriculture cannot assure the accuracy of any specific provision, and you are urged to consult the official printed versions of these publications or to contact legal counsel of your choice. All critical information should be independently verified.

The Montana Code and Constitution is at: http://leg.state.mt.us/css/mtcode_const/default.asp.



TITLE 80, CHAPTER 8 MONTANA PESTICIDE ACT

PART 1 - GENERAL ADMINISTRATION

<u>MCA</u>	<u>CONTENTS</u>	<u>PAGE NO</u>
80-8-101	SHORT TITLE	1
80-8-102	DEFINITIONS	1
80-8-103	PURPOSE	4
80-8-104	ADMINISTRATION	5
80-8-105	RULES	5
80-8-106	ADMINISTRATIVE PROCEDURES	6
80-8-107	NOTICE - PUBLIC INFORMATION	6
80-8-108	ADVISORY COUNCIL	7
80-8-109	EDUCATIONAL PROGRAMS	8
80-8-110	COOPERATION WITH OTHER AGENCIES	8
80-8-111	(TEMPORARY) WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM	9
80-8-112	(TEMPORARY) DEPOSIT OF WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING FEES	9
80-8-113	THROUGH 80-8-115 RESERVED	10
80-8-116	PESTICIDE MANAGEMENT ACCOUNT - DEPOSIT OF FEES AND PENALTIES - INVESTMENT	10
80-8-117	PESTICIDE CLEAN-UP SPECIAL REVENUE ACCOUNT	10
80-8-118	THROUGH 8-8-119 RESERVED	10
80-8-120	LOCAL PESTICIDE REGULATION	11
80-8-121	PENALTY	12

PART 2 REGISTRATION AND LICENSING

80-8-201	REGISTRATION	12
80-8-202	PROHIBITED ACTS	14
80-8-203	COMMERCIAL APPLICATOR	15
80-8-204	APPLICATION OF APPLICATOR'S LICENSE	16
80-8-205	COMMERCIAL OPERATOR	16
80-8-206	APPLICATOR'S AND OPERATOR'S EXAMINATION	16
80-8-207	DEALERS	17
80-8-208	DEALER'S EXAMINATION	17
80-8-209	FARM APPLICATORS	17
80-8-210	LICENSING NONRESIDENTS	18
80-8-211	REVOCATION OF LICENSES AND PERMITS	19
80-8-212	RETAIL SALE OF PESTICIDES - EDUCATION PROGRAM	19

<u>MCA</u>	<u>CONTENTS</u>	<u>PAGE NO</u>
80-8-213	GOVERNMENT AGENCIES	20
80-8-214	LIABILITY	21

PART 3
ENFORCEMENT AND PENALTIES

80-8-301	REPORT OF LOSS OR DAMAGE - EFFECT OF FAILURE TO REPORT	21
80-8-302	SAMPLING AND ANALYSIS	21
80-8-303	EMBARGO	21
80-8-304	INVESTIGATION AND ENFORCEMENT AUTHORITY	22
80-8-305	GENERAL VIOLATIONS - COMPLIANCE ORDERS	23
80-8-306	PENALTIES	24

PART 4
**MODEL SCHOOL INTEGRATED PEST AND PESTICIDE MANAGEMENT SAFETY
PROGRAM**

80-8-401	SHORT TITLE	26
80-8-402	STATEMENT OF POLICY	26
80-8-403	DEFINITIONS	26
80-8-404	MODEL SCHOOL INTEGRATED PEST AND PESTICIDE MANAGEMENT SAFETY PROGRAM	26
80-8-405	POLICYMAKING AUTHORITY	27

CHAPTER 8 MONTANA PESTICIDES ACT

Part 1

General Administration

80-8-101. Short title. This chapter may be cited as the "Montana Pesticides Act".

80-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient that acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Beneficial insects" means those insects that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(7) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(8) "Crop" means a food intended for human or animal consumption or a fiber product.

(9) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide except those pesticides that are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(10) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means a substance or mixture of substances for artificially

accelerating the drying of plant tissue.

(12) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests. The term does not include equipment used for the application of pesticides.

(13) "Environment" means the soil, air, water, plants, and animals.

(14) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(15) "Farm applicator" means a person applying pesticides to the person's own crops or land.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (all onchlorophyll-bearing plants of a lower order than mosses and liverworts), such as rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living humans or other animals.

(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient that is not an active ingredient.

(20) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (20)(a) applies if the preparation is highly toxic to man, determined as provided in 80-8-105 ; and if the pesticide contains arsenic in any form, the ingredient statement must also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(23) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) upon the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency; departments

of agriculture, interior, or health and human services; state experiment stations; state agricultural colleges; or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients that is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling bears any reference to registration under this chapter;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living humans or undue hazard to the environment;

(v) the label of the retail package that is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to humans or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.

(28) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29) "Pest" includes any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except a virus on or in living humans or other animals, that is normally considered a pest or that the department declares a pest.

(30) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or that the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(31) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants. The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(32) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(34) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, that the department has found and determined, subsequent to a hearing, to be injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means any person who sells, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide for home, yard, lawn, and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Waste pesticide" means a pesticide:

(a) that may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) that will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) that cannot be disposed of in a legal or economically feasible manner.

(37) "Weed" means any plant or part of the plant that grows where not wanted.

80-8-103. Purpose. The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vectorborne diseases. However, the protection of man and his essential needs--water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous--is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides.

80-8-104. Administration. This chapter shall be administered by the department.

80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, suspension or cancellation of registration, application, use or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to humans;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which must be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices, with a fee not to exceed \$5 per type of device, specifying classes of devices to be registered and providing for additional requirements;

(o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including requalification training;

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306;

(q) establishing fees for training courses and materials;

(r) establishing standards and procedures for administering a waste pesticide and

pesticide container collection, disposal, and recycling program;

(s) establishing special fees on waste pesticides or pesticide containers collected under the waste pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a credit for pesticide applicator, dealer, or operator license or permit fees.

(t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide facilities.

(3) (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and must encompass all reasonable factors that the department considers necessary to prevent damage or injury to:

(i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 must be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department must be made in writing and must be available at the department for public inspection. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department must include and be based upon written findings of fact. A copy of any rule or order certified by the department must be received in evidence in all courts of this state with the same effect as the original.

(Subsections (2)(r) and (2)(s) terminate December 31, 2003--sec. 1, Ch. 362, L. 1999.)

80-8-106. Administrative procedures. The administration of this chapter and all rulemaking and hearing functions under this chapter shall be conducted in accordance with the Administrative Procedure Act.

80-8-107. Notice -- public information. (1) As used in this section, the following definitions apply:

(a) "Building operator" means the owner, the owner's agent, or the building manager of any public building or, in the case of a public building that is leased to a tenant who is responsible for the operation of the building, the tenant or the tenant's building manager.

(b) "Public building" means a building that is owned or leased by a public agency, as defined in 18-1-101, and that is open to the public, including but not limited to:

- (i) a building that is used for educational, office, or institutional purposes; or
- (ii) a library, museum, school, hospital, auditorium, dormitory, or university building.

(2) The building operator who for indoor treatment personally applies or who contracts for or orders the application of a pesticide, excluding an antimicrobial, a disinfectant, a sanitizer, a pest bait, paste, or gel, or other pesticide that is designated by the department pursuant to 80-8-212 for retail sale, shall post a notice at each access to the public building or, if only a room has been treated, at each access to the room in a manner that allows the notice to be read before entering the building or room. However, if a room from which a heating or air conditioning system draws air has been treated, the notice required by this section must be posted at each access to the public building. The notice must:

- (a) be permanently displayed if the pesticide is applied on a regular basis;
- (b) be posted at the time of the application if the pesticide is not applied on a regular basis;

- (c) contain the name of the pesticide applied; and
- (d) contain the phone number at which a person may obtain information, the label, and the material safety data sheet on the pesticide applied.

(3) The applicator or building operator may not remove a notice posted pursuant to this section until the pesticide is dry or the reentry interval stated on the pesticide label has expired, whichever is later.

(4) A building operator shall keep, for 2 years, records of the pesticide applications and the material safety data sheet for each pesticide.

(5) A local government may not adopt standards that are more stringent than the standards established in subsections (2) through (4).

(6) Except as provided in Title 80, chapter 15, the department may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person.

80-8-108. Advisory council. (1) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed 12 members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council shall receive as compensation for his services the

sum of \$25 per day for each day actually spent in the performance of his duties and shall be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(3) The council may request that the department hold a public hearing to assist it in gathering factual data and information on the special problems assigned it.

80-8-109. Educational programs. (1) The department shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies and private industry, as well as such other persons it considers necessary, and may charge a fee for the programs commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of a state agency or of the Montana cooperative extension service.

(3) All fees collected pursuant to this section must be deposited in the state treasury to the credit of the state special revenue fund and must be spent for the purposes set forth in this section.

80-8-110. Cooperation with other agencies. (1) The department may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department and the department of environmental quality shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to wastes that are toxic, radioactive, corrosive, flammable, irritants, or strong sensitizers or that generate

pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

80-8-111. (Temporary) Waste pesticide and pesticide container collection, disposal, and recycling program. (1) The department shall establish a waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that purpose in this chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts, and other funds to finance this program.

(2) The department may cooperate and contract with a person to conduct and manage the waste pesticide and pesticide container collection, disposal, and recycling program.

(3) (a) The department shall establish a collection program for waste pesticides and pesticide containers. In order to participate in this program, a person shall:

(i) notify the department in advance of the type and amount of waste pesticide or pesticide containers that will be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and location designated by the department.

(b) A person may not be subject to an administrative or judicial penalty or action under this chapter as a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling program pursuant to this section.

(4) The department may designate types of waste pesticides or pesticide containers that it will not collect for disposal and recycling under this program.

(5) The department shall provide pesticide applicators, dealers, and operators who participate in the waste pesticide and pesticide container collection, disposal, and recycling program and who are subject to a license or permit fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213 with a credit against the fees levied pursuant to 80-8-105(2)(s), provided that:

(a) the credit does not exceed the amount of the license or permit fee paid by the applicator, dealer, or operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213; and

(b) each applicator, dealer, or operator may receive only one credit for each permit or license period.

(6) The department shall consult affected local governments before implementing the collection program under this section. (Repealed on occurrence of contingency--secs. 2, 3(2), Ch. 362, L. 1999.)

80-8-112. (Temporary) Deposit of waste pesticide and pesticide container collection, disposal, and recycling fees. (1) All license, permit, and special fees paid to the department to fund the waste pesticide and pesticide container collection, disposal, and recycling program and any grants or gifts accepted by the department pursuant to 80-8-111(1) must be deposited in an account in the state special revenue fund.

(2) Money in the account must be used by the department to administer the waste pesticide and pesticide container collection, disposal, and recycling program provided

for in 80-8-111. Unencumbered and unexpended money remaining in the account at the end of the fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action. (Repealed on occurrence of contingency--secs. 2, 3(2), Ch. 362, L. 1999.)

80-8-113 through 80-8-115 reserved.

80-8-116. Pesticide management account -- deposit of fees and penalties -- investment.

(1) There is a pesticide management account within the state special revenue fund established in 17-2-102.

(2) All licensing, permit, registration, and devices and blending plant fees collected under parts 1 and 2 of this chapter must be deposited in the pesticide management account for the purpose of administering this chapter, including but not limited to:

- (a) the cost of equipment and facilities;
- (b) the cost of inspecting, investigating, analyzing, and examining:
 - (i) pesticide products;
 - (ii) applicators, operators, and other users of pesticides;
 - (iii) dealers and retailers selling pesticides;
 - (iv) pesticide equipment, storage, disposal, and operational facilities; and
- (c) related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and 80-7-711 through 80-7-714 and 80-7-720.

(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of 17-6-201. The income from the investments must be credited to the pesticide management account within the state special revenue fund.

80-8-117. Pesticide cleanup special revenue account. (1) There is a pesticide cleanup special revenue account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the pesticide cleanup account any civil penalties collected under 80-8-306.

(3) The funds must be used by the department for cleanup and associated costs when a responsible party cannot be identified and located or if the responsible party is unable or unwilling to clean up the pesticide contamination and there is an imminent need to protect agriculture, health, or the environment.

(4) Unencumbered and unexpended funds remaining in the pesticide cleanup account at the end of the fiscal year may not lapse but must be carried forward for the stated purpose unless appropriated by subsequent legislative action.

(5) If a responsible party is identified and located after expenditure of the funds in the pesticide cleanup account, the department may initiate recovery of the funds through a voluntary agreement or in district court.

80-8-118 through 80-8-119 reserved.

80-8-120. Local pesticide regulation. (1) (a) A unit of local government may adopt an ordinance to require a commercial applicator, as defined in 80-8-102, to provide notification when applying a pesticide, subject to the following provisions:

(i) The applicator shall post a sign or signs at the time of the pesticide application or provide notification as provided for in subsection (1)(a)(v). The applicator, property owner, or property manager may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired, whichever is later.

(ii) A sign must be:

(A) at least 4 inches in height and 5 inches in width; and

(B) made of weather-resistant material if used for outdoor application.

(iii) A sign must contain:

(A) the words "pesticide application"; and

(B) the telephone number of the applicator, property owner, or property manager who can supply further information about the pesticide.

(iv) A sign must be posted:

(A) at a point clearly visible from each street or road frontage of the property so that the warning is conspicuous from the public right-of-way;

(B) for an interior application, at each public access to the treated property with the front of the sign facing the access;

(C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the first and tenth tees.

(v) Notification for an application by a mosquito control district or a weed management district must be provided in a local newspaper or on local radio or television stating that the property will be treated and providing the telephone number of an individual who can supply further information on the pesticide applications. Notification under this subsection (1)(a)(v) must be made annually in the spring and periodically during the pesticide application season.

(vi) Posting or notification is not required for the following:

(A) a spot treatment of an area that is less than 100 square feet;

(B) an applicator subject to the environmental protection agency's worker protection standards as published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;

(C) an application on land classified as agricultural land or forest land for taxation purposes;

(D) an application on an irrigation conveyance facility or land or on an irrigation ditch easement or right-of-way;

(E) an application of a pesticide that is a minimum risk pesticide as published by the environmental protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial registered with the environmental protection agency;

(F) an application on a railroad facility or right-of-way;

(G) an application on a public utility facility or right-of-way.

(b) A unit of local government that adopts a notification ordinance pursuant to this section shall:

(i) notify the department that it is adopting the ordinance on pesticide notification as provided in this section and provide the department a final copy for the department's register provided for in subsection (4); and

(ii) fund the costs, including but not limited to:

(A) educating its citizens of the ordinance's requirements;
(B) compensating personnel to enforce the ordinance; and
(C) prosecution of a violation of the ordinance.
(c) A unit of local government may not adopt a notification ordinance under this section that imposes additional fee requirements on a commercial applicator.

(2) The department may enter into a cooperative agreement with a unit of local government for the administration and enforcement of local rules adopted under 80-8-105 (3)(a).

(3) Except as provided in subsections (1) and (2), a unit of local government may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title 75, chapter 10, part 4.

(4) The department shall maintain and, upon request, distribute a register of ordinances adopted by local governing bodies pursuant to subsection (1).

80-8-121. Penalty. A person who violates a notification ordinance adopted pursuant to 80-8-120:

- (1) is subject to a written warning for the first violation;
- (2) is guilty of a misdemeanor and upon conviction may be fined not more than \$50 for the second violation; and
- (3) is guilty of a misdemeanor and upon conviction may be fined not more than \$500 for a third or subsequent conviction.

Part 2

Registration and Licensing

80-8-201. Registration. (1) Each pesticide distributed, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or between points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement that includes:

- (a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;
- (b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is registered, and a statement of all claims to be made for it, including directions for use;
- (c) the trade and chemical name of the pesticide;
- (d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement is

required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in 80-8-105 (3) and in subsection (8) of this section. The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of \$90 for each pesticide registered. The applicant shall pay an annual fee of \$90 for:

(a) each emergency exemption requested by the state as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136p;

(b) a special local need registration, as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c)(1); or

(c) an experimental-use permit registration, as provided in 7 U.S.C. 136c.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide, its labeling, and other material required to be submitted comply with the requirements of 80-8-202, the department shall register the pesticide.

(6) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the pesticide, its labeling, and other material required to be submitted do not comply with this chapter, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide endangers humans or the general environment afforded protection under 80-8-105 (3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in the state to another plant in the state by the same person.

(8) (a) The department, the department of public health and human services, and the department of fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The departments shall use the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted under the act. The department shall provide the departments of public health and human services and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department's proposed action on the application. The department, the department of public health and human services, and the department of fish, wildlife, and parks shall approve or disapprove the application

within 10 days after the receipt of the application. If the department, the department of public health and human services, and the department of fish, wildlife, and parks are in agreement with the proposed registration, the department shall issue the registration.

(b) The department shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department shall issue the registration.

(c) The registrant applying for registration must be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, public health and human services, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration must be accepted by the departments and implemented by the department of agriculture.

(9) (a) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. Except as provided in subsection (9)(b), if the federal cancellation allows existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of the products to ensure their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5) may be sold and used according to environmental protection agency labeling requirements or other requirements for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer, formulator, or distributor is terminated.

80-8-202. Prohibited acts. (1) It is unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) any pesticide which has not been registered pursuant to the provisions of 80-8-201 or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration or if the composition of a pesticide differs from its composition as represented in connection with its registration or if registration or reregistration has been refused, revoked, canceled, or suspended. The department of agriculture may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when such change does not adversely affect the product for its intended use and if proper application therefor is made.

(b) any pesticide unless it is in the registrant's or the manufacturer's unbroken

immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) the name and address of the manufacturer, registrant, or person for whom manufactured;

(ii) the trade and chemical name, brand, or trademark under which said article is sold;

(iii) the net weight or measure of the content, subject to such reasonable variations as the department may permit;

(c) any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in 80-8-105, unless the label shall bear, in addition to any other matter required by this chapter:

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color;

(iii) a statement of an antidote for the pesticide;

(d) the pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored, as provided by regulations issued in accordance with this chapter, or any other white powder pesticide which the department, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the environment and the feasibility of such coloration or discoloration, shall by regulations require to be distinctly colored or discolored, unless it has been so colored or discolored. The department may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use is not necessary for the protection of the public health and the environment.

(e) any pesticide which is adulterated or misbranded, or any device which is misbranded.

(2) It is unlawful for any person to:

(a) detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules promulgated hereunder or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this chapter;

(b) use for his own advantage or reveal, other than to the department or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians or to veterinarians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of 80-8-201.

80-8-203. Commercial applicator. (1) It is unlawful for a person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. An application for a pesticide applicator's license must be accompanied by a fee of \$45. The provisions of this subsection do not apply to a person employed only to operate equipment used for the application of a

pesticide if the person has no financial interest or other control over the equipment other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators must be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided in 80-8-205.

(3) A veterinarian licensed as provided in Title 37, chapter 18, part 3, is not required to be licensed to apply nonrestricted pesticides, provided that the veterinarian registers with the department each year. The veterinarian must meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules.

4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator's supervision or employment.

(5) The department shall assess an additional annual license fee of \$10 on applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.

80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar year, provided that pesticide applicators applying for renewal of license shall do so on or before March 1 of that calendar year. Any applicator applying for renewal of license after March 1 shall be assessed a \$25 late licensing fee.

(2) An individual applying for a license to engage in aerial application of pesticides shall certify on the application that the individual has met all the federal aviation administration and the department of transportation requirements for aerial pesticide applicators.

80-8-205. Commercial operator. (1) The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

(2) The department may by rule establish a fee to be paid by commercial operators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112. (Subsection (2) terminates December 31, 2003--sec. 1, Ch. 362, L. 1999.)

80-8-206. Applicator's and operator's examination. (1) The department of agriculture shall publish and distribute or have available upon request such information as may be helpful to persons engaged in the application of pesticides, including information that may be required or which may appear upon any examination given to applicators and operators by the department.

(2) The department shall require an applicant for a license to show upon written examination that he possesses adequate knowledge concerning the proper use and

application of pesticides under the classification for which he has applied, provided that the applicator and operator may not be required to take a reexamination upon renewal of licensing.

80-8-207. Dealers. (1) It is unlawful for a person to sell, offer for sale, deliver, or have delivered within the state a pesticide without first obtaining a license from the department for each calendar year or portion of a year. A separate dealer's license and fee is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and under a licensed dealer are not required to obtain a license. The dealer shall furnish the department with the names and addresses of its field personnel and salespeople selling pesticides within the state.

(2) The application for a license must be accompanied by a fee of \$45. Dealers applying for renewal of a license shall do so on or before March 1 of the calendar year. A dealer applying for renewal of a license after March 1 must be assessed a \$25 late licensing fee.

(3) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license or permit issued under authority of this chapter, or the dealer may verify, under procedures authorized by the department, the purchaser's license or permit through a department list or by electronic means before completing a sale. The department may adopt rules concerning dealer verification of licenses and permits.

(4) The department shall assess an additional annual license fee of \$10 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians register with the department each year. However, the certified pharmacies and veterinarians shall meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules.

80-8-208. Dealer's examination. Each applicant applying for a dealer's license and/or his employee(s) in charge of pesticide sales shall be required to pass a reasonable examination administered by the department. Dealers applying for relicensing may not be required to take an additional examination if they have met the department's requirements.

80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and using a pesticide designated by the department as a restricted-use pesticide. The fee for the permit is \$35. The special-use permit is effective for 5

calendar years. The department may establish a staggered years system of issuing permits. Revenue generated by the permit fee must be expended in the following manner:

- (a) \$15 to the department to administer the permitting program;
- (b) \$5 to the Montana state university-Bozeman extension service for the development of educational materials for farm pesticide applicators; and
- (c) \$15 to the extension service of the county in which the permit applicant resides for farm pesticide applicator certification and training programs.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting an agricultural commodity on property owned,

(3) Farm applicators shall qualify for their first permit by either passing a graded written examination or attending a training course approved by the department and taking an ungraded written examination. The examinations and course must meet the minimum certification standards and procedures established by the environmental protection agency except as otherwise provided by this chapter.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) The department shall require farm applicators to requalify for renewal of the 5-year permit by attending an approved training program. The department shall establish by rule a uniform system of administering the requalification training program. The department may credit only training related to the standards set forth in subsection (3).

(6) Provisions of this chapter relating to certification of farm applicators do not apply to a farm applicator applying nonrestricted pesticides on the applicator's own land or on lands of neighbors if the farm applicator:

(a) operates farm property and operates and maintains pesticide application equipment primarily for the applicator's own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not represent to the public that the farm applicator is a pesticide applicator;

(c) operates pesticide application equipment only in the vicinity of the applicator's own property and for the accommodation of immediate neighbors.

(7) (a) The department shall assess an additional permit fee of \$15 on farm applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(b) Farm applicators must be assessed the fee at the beginning of the next 5-year permit renewal period. The department may assess a prorated fee for a farm applicator becoming licensed within a 5-year permit renewal period.

(c) Fees collected under this subsection (7) must be deposited in the state special revenue account pursuant to 80-8-112. (Subsection (7) terminates December 31, 2003--sec. 1, Ch. 362, L. 1999.)

80-8-210. Licensing nonresidents. Any nonresident applying for a license under this chapter to operate in Montana shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may

be had in the event of any suit against the nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of Montana over such nonresident applicant; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The department shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state.

80-8-211. Revocation of licenses and permits. (1) The department shall establish the policy and procedures on the revocation of licenses or permits. The department may refuse to grant or renew or may revoke or modify a license or permit, as the case may require, when the department is satisfied that the licensee or permittee is not qualified to sell, use, or apply pesticides under the conditions in the locality in which the licensee or permittee operates or has operated or that the licensee or permittee has committed any of the following acts, each of which is considered a violation of this chapter:

- (a) made false or fraudulent claims or recommendations through any media misrepresenting the effect of materials or methods to be used;
 - (b) applied or sold unapproved or illegal materials or applied or sold a pesticide without possessing a current and appropriate license or permit;
 - (c) operated in a faulty, careless, or negligent manner;
 - (d) operated faulty or unsafe equipment;
 - (e) refused or neglected to comply with the provisions of this chapter, rules adopted under this chapter, or any lawful order of the department;
 - (f) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required;
 - (g) made false or fraudulent records or reports;
 - (h) operated equipment for the commercial application of a pesticide without having a license or permit;
 - (i) used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit;
 - (j) used or applied a registered pesticide inconsistent with its labeling or the label or the department restrictions on the use of that pesticide;
 - (k) made false or misleading statements in connection with a pest inspection of land, crops, yards, or any premises in an attempt to induce any person to engage the licensee's or permittee's services to eliminate, control, or mitigate the alleged pest or made false or misleading statements concerning the effectiveness of any pesticide or its application;
 - (l) failed to satisfy a judgment entered against the licensee or permittee as a result of a complaint concerning the use of a pesticide.
- (2) Decisions of the department relating to the issuing of licenses or permits may be appealed.

80-8-212. Retail sale of pesticides -- education program. (1) The department of agriculture is authorized to designate the pesticides that may be sold in this state at

retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department may also limit the retail sale of such designated pesticides to quantities up to a specific number of pounds or gallons and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(2) Subject to the availability of funds, the department and the Montana state university-Bozeman extension service shall enter into a cooperative agreement to establish an education program for retailers and the general public on pests, pesticides, and alternative control methods.

80-8-213. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agencies are subject to the provisions of this chapter and rules adopted under this chapter concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies are subject to the provisions of 80-8-203 through 80-8-208.

(2) The department shall issue a limited commercial applicator's or dealer's license for an annual fee of \$50, which is valid only when an applicator or dealer is applying or selling pesticides for a state agency, municipal corporation, or any other governmental agency, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

(3) (a) A governmental agency shall pay for each of its first four employee applicators:

(i) an annual applicator's fee of \$50; and

(ii) an additional fee of \$10 to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.

(b) A governmental agency shall pay for each additional employee applicator:

(i) an annual applicator's fee of \$5; and

(ii) an additional fee of \$10 to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.

(c) A government agency may not be required to pay more than \$600 annually for the licensing of employees as applicators and operators.

(d) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and pesticide container collection, disposal, and recycling program must be deposited in the state special revenue account pursuant to 80-8-112.

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing the courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee.

80-8-214. Liability. The department shall annually require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under rules promulgated by the department.

Part 3

Enforcement and Penalties

80-8-301. Report of loss or damage -- effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within 30 days from the time the occurrence of the loss became known to him, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

- (a) name and address of claimant;
- (b) type, kind, and location of property alleged to be injured or damaged;
- (c) date the alleged injury or damage occurred;
- (d) name of person applying the pesticide and allegedly responsible for the loss or damage;
- (e) name of the owner or occupant of the property for whom such pesticide application was made.

(2) The filing of such a report or the failure to file such a report shall not be alleged in any complaint which might be filed in a court of law, and the failure to file shall not of itself be considered any bar to the maintenance of any criminal or civil action.

(3) The failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by any person, the department may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter until such report is filed. The filing of such report shall not constitute institution of a civil or criminal suit in any court, state or federal.

80-8-302. Sampling and analysis. (1) The department shall have the authority to sample, inspect, make analysis of pesticides or devices distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such pesticides or devices are in compliance with the provisions of this chapter. The department is authorized with a warrant or the consent of the inhabitant or owner to enter upon any public or private premises including any vehicle of transport in order to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from sources such as the Journal of the Association of Official Analytical Chemists.

(3) In all administrative or legal actions involving the composition, identification, or quantification of a pesticide, a certified copy of the official analysis signed by the department's authorized chemist shall be accepted as prima facie evidence of the determinations set forth therein.

80-8-303. Embargo. (1) Whenever a duly authorized agent of the department of

agriculture finds or has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered under the provisions of 80-8-201 (5), fails to bear on its label the information required by this chapter, or is a white powder pesticide and is not colored as required under this chapter, he shall affix to such article a tag or other appropriate marking giving notice thereof and stating that the article has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. Any person who removes or disposes of such detained or embargoed article by sale or otherwise, without prior permission, or removes or alters the tag or marking, is guilty of a misdemeanor and may be charged accordingly or may be subjected to appropriate administrative proceedings, or both.

(2) When an article detained or embargoed under subsection (1) has been found by such agent to be in violation, if after 30 days the violation has not been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted thereunder, such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent, provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of such pesticide or device, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or device on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of such supervision have been paid.

80-8-304. Investigation and enforcement authority. (1) In enforcing this chapter, the department or its authorized agents, upon reasonable cause, may enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

- (a) equipment used for applying pesticides;
- (b) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;
- (c) records on the selling or use of pesticides and the person's stock of pesticides;
- (d) handling, use, application, storage, and disposal of pesticides by any person;
- (e) pesticides being applied or to be applied and to sample the pesticides or agricultural commodities;
- (f) the use and application of a pesticide;
- (g) the environment alleged to have been exposed to pesticides and to collect and analyze environmental samples;

(h) a person's compliance with pesticide worker protection standards and labeling, including handlers and workers;

(i) a person's compliance with pesticide ground water and environmental protection agency endangered species standards and labeling; or

(j) a person's compliance with licensing, labeling, permitting, and certification requirements.

(2) The department is authorized to investigate all incidents involving the application, sale, introduction, or use of registered pesticides or compounds capable of acting in the manner of pesticides when the incidents have a reasonable potential to adversely affect the public environment or persons.

(3) The investigation or inspection authority provided for in this section may be exercised over persons not possessing a required license or permit.

80-8-305. General violations -- compliance orders. (1) Consistent with the provisions of Title 80, chapter 15, it is unlawful for a person:

(a) to discard any pesticide or pesticide container in a manner that causes injury to humans, domestic animals, or wildlife or that pollutes any waterway in a way harmful to any wildlife in the waterway or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in a manner that endangers humans or the environment or that endangers food or any other products that may be transported, stored, displayed, or distributed with the pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand;

(d) to apply or attempt to apply any registered pesticide in a manner that is inconsistent with the labeling, as defined in 80-8-102 ; or

(e) to use any unregistered chemical or biological agent that is required to be registered as a pesticide by the Montana Pesticides Act.

(2) It is unlawful for a person to manufacture, formulate, or store any registered pesticide or a component or byproduct of a registered pesticide in a manner that the pesticide, component, or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. The containment or confinement of odor is exempted from the provisions of this subsection.

(3) (a) The department may issue a compliance order to a person violating the provisions of 80-8-211 , the provisions of this section, or any other requirement established pursuant to this chapter. The compliance order may be issued to any person, including the person's employees, agents, or subcontractors.

(b) The provisions of this subsection (3) are not intended to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site.

(4) A compliance order may require the cleanup of any pesticide that a person has accidentally or purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a pesticide if the person can document and

prove to the satisfaction of the department that the soil will be beneficially used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the beneficial use of the soil nor the degradation of the pesticide in the soil will adversely affect agriculture, human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the department shall consult with the department of environmental quality to ensure that the provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated by a pesticide is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as determined by the department, the department of environmental quality is responsible for regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or suspended pesticide without the specific approval of the department of environmental quality or the U.S. environmental protection agency, or both, as required on a case-by-case basis.

(5) When issuing a compliance order, the department may require a person who has violated a provision of this chapter to conduct monitoring to assist in determining the presence or level of concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(6) A compliance order must specify the requirement of this chapter that has been violated and establish a time schedule for compliance. In establishing a time schedule for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

80-8-306. Penalties. (1) A person convicted of violating any of the provisions of this chapter or the rules issued under this chapter or who misrepresents, prevents, or attempts to prevent the department or its authorized agent in performance of its duty in connection with the provisions of this chapter is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

(2) The department or its authorized representative may apply to the district court of the county where a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies of law. When a person makes pesticide applications in more than one county on a commercial basis without a license or permit or operates in violation of a lawful written order of the department in more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the district court of another county where a violation has occurred or is about to occur and the department may select and proceed in the court that is most appropriate under the circumstances. The injunction is to be issued without bond.

(3) Nothing in this chapter requires the department or its authorized agent to report minor violations of the chapter for prosecution or for the institution of seizure

proceedings when it believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order. This chapter does not apply to common carriers transporting shipments tendered to them by the general public.

(4) Any person who with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than \$500 or be imprisoned for not more than 1 year, or both.

(5) (a) Any registrant, applicator, dealer, retailer, or other person who commits a major violation of this chapter as defined in subsection (5)(e), in addition to other penalties provided in this chapter, may be assessed a civil penalty by the department of not more than \$2,500 for each offense. However, farm applicators possessing a permit may not be assessed a civil penalty over \$500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other department warning, order, or administrative action authorized by this chapter.

(b) A civil penalty may not be assessed unless the person charged was given notice and opportunity for a hearing and an appeal pursuant to the Montana Administrative Procedure Act.

(c) (i) If after investigation the department determines that a major violation of this chapter has significantly harmed human life, welfare, or safety or affected agricultural commodities, livestock, or the environment in a manner that cannot be appropriately addressed by the penalties assessed in subsection (5)(a), the department may seek a civil penalty, not to exceed \$25,000 for each offense, by filing a complaint in district court.

(ii) In addition to the civil penalty provided in subsection (5)(c)(i), a person who willfully commits a major violation of this chapter that results in significant harm to human life, welfare, or safety or to agricultural commodities, livestock, or the environment is guilty of a felony and shall, upon conviction, be fined not more than \$50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(d) In determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to human health, agricultural commodities, livestock, or the environment.

(e) A major violation of this chapter includes:

(i) misuse of a pesticide that results in proven exposure of humans, agricultural commodities, or livestock or results in proven harm to human health, agricultural commodities, livestock, or the environment. As used in this subsection (i), "misuse" means the use, handling, or release of a pesticide by a person in a manner inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing, and loading rules or pesticide and container disposal rules.

(ii) selling of a restricted pesticide to a person not certified or authorized to purchase restricted pesticides;

(iii) use or sale of unregistered pesticides;

(iv) failure to maintain any individual pesticide application and sales records;

(v) using or selling pesticides without having obtained the required license or permit;

(vi) noncompliance with pesticide worker protection standards and labeling;

(vii) noncompliance with pesticide ground water and environmental protection

agency endangered species standards and labeling;

(viii) noncompliance with pesticide or pesticide container disposal, labeling, or handling requirements and standards; or

(ix) reoccurrence of any identical violation of this chapter within 2 years of the first violation.

(f) If the department is unable to collect the civil penalty or if a person fails to pay all or a portion of the civil penalty as determined by the department, the department may recover that amount by action in the appropriate district court.

Part 4

Model School Integrated Pest and Pesticide Management Safety Program

80-8-401. Short title. This part may be cited as the "Model School Integrated Pest and Pesticide Management Safety Program Act".

80-8-402. Statement of policy. The legislature finds and declares that:

(1) the exposure of children to pesticides applied in and around schools can pose a potentially acute or chronic toxicological hazard to their health;

(2) infants and children can be especially vulnerable to pesticides, especially if pesticides are not properly applied or used;

(3) schools need to adopt pest management programs that minimize exposure of school children to pesticides and provide for alternative pest control methods; and

(4) the department shall prepare and distribute to each Montana school district a model integrated pest and pesticide management safety program that satisfies the provisions of this section.

80-8-403. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of agriculture as provided for in 2-15-3001.

(2) "Director" means the director of agriculture as provided for in 2-15-3001.

(3) "School district" means a school district established according to Title 20, chapter 6.

80-8-404. Model school integrated pest and pesticide management safety program. (1) The department shall develop a model school integrated pest and pesticide management safety program and distribute the program to school districts by July 1, 1994. The model program must provide guidance and recommendations to school districts on management of pests and pesticides and on alternatives within schools and on school grounds.

(2) The model program guidelines and recommendations must include information on pests, alternative and pesticide control methods and their integration, environmental concerns, and protection of public health. Special information and recommendations for protecting school children from exposure to pesticides and the acute or chronic potential adverse health effects of pesticides must be emphasized. The department may periodically revise the model program guidelines, policies, and recommendations as new integrated pest, pesticide, or alternative management techniques and methods are

developed and as new information on protecting school children from pesticides is developed.

(3) The director may consult and obtain advice from pest and pesticide specialists, school personnel, and the public on any aspect of the model school integrated pest and pesticide management safety program.

80-8-405. Policymaking authority. The department may adopt policies and guidelines to implement this part.



**MONTANA DEPARTMENT OF AGRICULTURE
AGRICULTURAL SCIENCES DIVISION**

ADMINISTRATIVE RULES OF MONTANA

**CHAPTER 10
SUB-CHAPTER 1 THROUGH 18**

PESTICIDE RULES

**GREGORY H. AMES
ADMINISTRATOR**

**NANCY K. PETERSON
DIRECTOR**

REVISED FEBRUARY 2005

Disclaimer

This document contains a copy of the laws and rules relating to the subject matter. Although every attempt is made to ensure that the information placed in this document is accurate and timely, the Department of Agriculture cannot assure the accuracy of any specific provision, and you are urged to consult the official printed versions of these publications or to contact legal counsel of your choice. All critical information should be independently verified.

The Administrative Rules of Montana may be found online through the internet at: <http://arm.sos.state.mt.us>

**MONTANA DEPARTMENT OF AGRICULTURE
AGRICULTURAL SCIENCES DIVISION**

**CHAPTER 10
SUB-CHAPTER 1**

LIABILITY RULES

<u>ARM</u>	<u>CONTENTS</u>	<u>PAGE NO</u>
4.10.101	FINANCIAL RESPONSIBILITIES.....	1
4.10.102	TYPES AND CONDITIONS OF FINANCIAL RESPONSIBILITY.....	1
4.10.103	APPROVAL, MODIFICATION, AND CANCELLATION OF FINANCIAL RESPONSIBILITY ELEMENTS.....	3
4.10.104	JUDGEMENT OF DAMAGES AND/OR INJURY	3
4.10.105	INCIDENT REPORTS AND RECORDS.....	4
4.10.106	REVOCATION OF LICENSE	5
4.10.107	PERSONAL LIABILITY FOR DAMAGES.....	5
4.10.108	LICENSING PERIOD	5

**SUB-CHAPTER 2
PESTICIDE APPLICATOR AND OPERATOR RULES**

4.10.201	PESTICIDE APPLICATOR LICENSING REQUIREMENTS.....	6
4.10.202	CLASSIFICATION OF PESTICIDE APPLICATORS.....	8
4.10.203	COMPETENCY STANDARDS FOR LICENSING AND CERTIFICATION - LICENSING OF PESTICIDE APPLICATORS	11
4.10.204	GENERAL STANDARDS OF COMPETENCY FOR ALL APPLICATORS	12
4.10.205	SPECIFIC STANDARDS OF COMPETENCY FOR EACH APPLICATOR CLASSIFICATION.....	14
4.10.206	INDIVIDUALS REQUIRING A PESTICIDE OPERATOR'S LICENSE.....	17
4.10.207	RECORDS	18
4.10.208	INCONSISTENT USE	20
4.10.209	NOTIFICATION BY LICENSED OR CERTIFIED LICENSED APPLICATORS	20

SUB-CHAPTER 3 AQUATIC HERBICIDE RULES

<u>ARM</u>	<u>CONTENTS</u>	<u>PAGE NO</u>
4.10.301	SALE OR USE OF AQUATIC HERBICIDES PROHIBITED- EXCEPTION (REPEALED)	20
4.10.302	SALE OF AQUATIC HERBICIDES (REPEALED)	21
4.10.303	USE OF AQUATIC HERBICIDES (REPEALED)	21
4.10.304	APPLICATION FOR PERMIT (REPEALED)	21
4.10.305	APPLICATOR RECORDS (REPEALED)	21
4.10.306	APPLICATOR INCIDENT REPORT (REPEALED)	21
4.10.307	AQUATIC PESTICIDE TRAINING CREDENTIAL (REPEALED)	21
4.10.308	PERSONAL LIABILITY FOR DAMAGES (REPEALED)	21
4.10.309	VIOLATIONS (REPEALED)	21
4.10.310	EXPIRATION DATE OF RULES (REPEALED)	21
4.10.311	DESIGNATION OF RESTRICTED-USE AQUATIC HERBICIDES	21
4.10.312	SALE OF RESTRICTED-USE AQUATIC HERBICIDES	21
4.10.313	USE OF RESTRICTED-USE AQUATIC HERBICIDES	21
4.10.314	APPLICATION OF RESTRICTED-USE AQUATIC HERBICIDES	22
4.10.315	APPLICATOR RECORDS	22
4.10.316	APPLICATOR INCIDENT REPORT	23
4.10.317	PERSONAL LIABILITY FOR DAMAGES	23
4.10.318	VIOLATION (REPEALED)	23

SUB-CHAPTER 4 CERTIFICATION OF FARM APPLICATOR RULES

4.10.401	FARM APPLICATOR CERTIFICATION	23
4.10.402	EMERGENCY PEST PROBLEMS (REPEALED)	25
4.10.403	CREDENTIALS	25
4.10.404	IMPROPER PURCHASE OR USE	25

SUB-CHAPTER 5 PESTICIDE DEALER AND RETAILER RULES

4.10.501	APPLICATION FOR LICENSE	25
4.10.502	RETAIL SALE OF PESTICIDES	26
4.10.503	PESTICIDE DEALERS REQUIREMENTS AND STANDARDS	27
4.10.504	RECORDS	28
4.10.505	VIOLATIONS (REPEALED)	29

**SUB-CHAPTER 6
RULES FOR ISSUANCE, REVOCATION, OR DENIAL OF
PESTICIDE LICENSES AND PERMITS**

<u>ARM</u>	<u>CONTENTS</u>	<u>PAGE NO</u>
4.10.601	RULES OF PRACTICE (REPEALED).....	29
4.10.602	GRANTING, RENEWING, AND DENYING LICENSES, CERTIFICATES AND PERMITS (REPEALED)	29
4.10.603	REVOCATION OF LICENSES AND PERMITS (REPEALED).....	29
4.10.604	PERMANENT INJUNCTION OR REVOCATION (REPEALED).....	30

**SUB-CHAPTER 7
RESTRICTION OF PESTICIDE RULES**

4.10.701	GENERAL	30
4.10.702	REGISTRATION REQUIREMENTS	30
4.10.703	CLASSIFICATION OF PESTICIDES (REPEALED)	31
4.10.704	CHANGE IN CLASSIFICATION FROM GENERAL TO RESTRICTED USE (REPEALED)	31
4.10.705	WARNINGS AND PRECAUTIONARY STATEMENTS (REPEALED).....	31
4.10.706	CONTENTS OF LABEL DIRECTIONS FOR USE (REPEALED)	31
4.10.707	STATEMENT OF USE CLASSIFICATION (REPEALED)	31
4.10.708	VIOLATIONS (REPEALED)	31
4.10.709	USE OF PESTICIDES ON PEST INFESTATIONS IN ALFALFA SEED CROPS	31

**SUB-CHAPTER 8
RINSING AND DISPOSING OF PESTICIDE CONTAINERS**

4.10.801	DEFINITION OF TERMS	32
4.10.802	RINSING AND DISPOSAL REQUIREMENTS	32
4.10.803	RINSING EMPTY PESTICIDE CONTAINERS.....	33
4.10.804	USE OF RINSATES	34
4.10.805	DISPOSAL AND RECYCLING OF METAL, GLASS OR PLASTIC PESTICIDE CONTAINERS.....	34
4.10.806	DISPOSAL OF OTHER TYPES OF EMPTY PESTICIDE CONTAINERS.....	35
4.10.807	BURNING OR INCINERATION OF PESTICIDE CONTAINERS	35
4.10.808	HANDLING PESTICIDE CONTAINERS BEING RINSED, RECYCLED, RECONDITIONED, DISPOSED OR REFILLED	35

SUB-CHAPTER 9 ENDRIN

<u>ARM</u>	<u>CONTENTS</u>	<u>PAGE NO</u>
4.10.901	SALE AND USE OF ENDRIN FOR PALE WESTERN AND ARMY CUTWORM CONTROL (REPEALED).....	35
4.10.902	VIOLATION (REPEALED).....	36
4.10.903	ENDRIN (REPEALED).....	36

SUB-CHAPTER 10 CIVIL PENALTIES

4.10.1001	DEFINITIONS	36
4.10.1002	ENFORCEMENT	37
4.10.1003	ABILITY TO STAY IN BUSINESS.....	37
4.10.1004	OTHER PENALTIES.....	37
4.10.1005	PENALTY DETERMINATION	37
4.10.1006	GRAVITY OF VIOLATIONS.....	42
4.10.1007	DEGREE OF CARE - MISUSE	43
4.10.1008	DEGREE OF CARE - VIOLATIONS OTHER THAN MISUSE.....	43
4.10.1009	NONCOMPLIANCE WITH PESTICIDE WORKER PROTECTION STANDARDS AND LABELING.....	43
4.10.1010	NONCOMPLIANCE WITH PESTICIDE GROUND WATER AND ENVIRONMENTAL PROTECTION AGENCY ENDANGERED SPECIES STANDARDS AND LABELING	44
4.10.1011	NONCOMPLIANCE WITH PESTICIDE CONTAINER DISPOSAL LABELING OR HANDLING REQUIREMENTS AND STANDARDS.....	44
4.10.1012	REMEDIAL ACTION IN LIEU OF CIVIL PENALTIES	45

SUB-CHAPTER 11 Pesticide Reporting, Cleanup and Containment

4.10.1101	DEFINITION OF TERMS	45
4.10.1102	GENERAL SPILL CLEANUP, REPORTING AND CONTAINMENT REQUIREMENTS.....	46
4.10.1103	GENERAL REQUIREMENTS AT PERMANENT STORAGE FACILITIES.....	47
4.10.1104	PRIMARY CONTAINMENT STANDARDS FOR BULK PESTICIDES.....	48
4.10.1105	SECONDARY CONTAINMENT AT PERMANENT STORAGE FACILITIES.....	49
4.10.1106	OPERATIONAL ACTIVITIES FOR BULK PESTICIDES AT A PSF	50

<u>ARM</u>	<u>CONTENTS</u>	<u>PAGE NO</u>
4.10.1107	RECOVERY, USE OR DISPOSAL OF SPILLS, DEBRIS, PRECIPITATION AND WASH WATER AT A PERMANENT STORAGE FACILITY	50
4.10.1108	SPILL RESPONSE PLAN	50
4.10.1109	RECORDS, INSPECTION AND MAINTENANCE RECOMMENDATIONS	50

SUB-CHAPTER 12

1080 LIVESTOCK PROTECTION COLLARS

4.10.1201	GENERAL	51
4.10.1202	REGISTRATION	51
4.10.1203	DEALER SALES	51
4.10.1204	APPLICATOR CLASSIFICATIONS AND REQUIREMENTS	51
4.10.1205	USE RESTRICTIONS OF COMPOUND 1080 LIVESTOCK PROTECTION COLLARS (REPEALED)	53
4.10.1206	SUPERVISION, INSPECTION OF 1080 LIVESTOCK PROTECTION COLLARS (REPEALED)	53
4.10.1207	RECORDS (REPEALED)	53
4.10.1208	VIOLATIONS (REPEALED)	53

SUB-CHAPTER 13

RESERVED

SUB-CHAPTER 14

RULES OF REGISTRATION AND USE OF M-44 SODIUM CYANIDE CAPSULES AND M-44 DEVICES

4.10.1401	GENERAL	53
4.10.1402	REGISTRATION	53
4.10.1403	DEALER SALES	53
4.10.1404	APPLICATOR CLASSIFICATIONS AND REQUIREMENTS	54
4.10.1405	USE OF CYANIDE CAPSULES AND M-44 EJECTOR (REPEALED)	55
4.10.1406	SUPERVISION, INSPECTION, AND REMOVAL OF CYANIDE CAPSULES AND M-44 DEVICES (REPEALED)	55
4.10.1407	RECORDS (REPEALED)	55
4.10.1408	VIOLATIONS (REPEALED)	55

SUB-CHAPTER 15

PESTICIDE TERMINOLOGY RULE

4.10.1501	DEFINITION OF TERMS	56
-----------	---------------------------	----

**SUB-CHAPTER 16
RESERVED**

**SUB-CHAPTER 17
RODENTICIDE SURCHARGE AND GRANTS**

<u>ARM</u>	<u>CONTENTS</u>	<u>PAGE NO</u>
4.10.1701	DEFINITIONS (REPEALED).....	63
4.10.1702	DEALER RECORDS AND SURCHARGE ASSESSMENT (REPEALED).....	63
4.10.1703	GRANT APPLICATION PROCEDURE (REPEALED).....	63
4.10.1704	GRANT APPLICATION CONTENT AND FEASIBILITY (REPEALED).....	63
4.10.1705	LEGAL REQUIREMENTS (REPEALED)	63
4.10.1706	PROJECT EVALUATION (REPEALED)	63
4.10.1707	REPORTING AND MONITORING PROCEDURES (REPEALED).....	63
4.10.1708	APPLICABILITY DATE (REPEALED).....	63

**CHAPTER 18
PESTICIDE DISPOSAL PROGRAM**

4.10.1801	GENERAL	63
4.10.1802	DEFINITIONS	64
4.10.1803	STANDARDS FOR DISPOSAL PROGRAM OPERATION	64
4.10.1804	DISPOSAL PROGRAM OPERATION.....	65
4.10.1805	DISPOSAL PROGRAM COLLECTION PRIORITIES.....	67
4.10.1806	FEES.....	67
4.10.1807	LIABILITY.....	68
4.10.1808	TERMINATION OF RULES (REPEALED)	68

AGRICULTURAL SCIENCES DIVISION

Sub-Chapter 1 Liability Rules

4.10.101 FINANCIAL RESPONSIBILITIES (1) Applicants applying for a commercial pesticide applicator's license shall provide, on forms approved by the department, evidence of financial responsibility, establishing ability of applicant and/or his employees, to respond to and indemnify any person or persons for all damages to their person or property arising out of the use, misuse, or attempted use of application of pesticides, within the financial limits set forth below. Provided, however, that this requirement for financial responsibility has no application to, and cannot be subjected to pay for any injury or damage to the person or property of the landowner hiring the pesticide application.

(a) The minimum financial responsibility shall be in the amount of one thousand five hundred dollars (\$1,500.00) for aerial applicators, and five hundred dollars (\$500.00) for all other applicators.

(2) The department may require each applicator that experiences or causes chemical accidents or occurrences during one or more licensing periods, to increase his financial responsibility requirement up to and including ten thousand dollars (\$10,000.00).

(3) An applicator possessing insurance coverage exceeding the requirements of this rule and its subsections, upon documentation approved by the department, shall be considered as meeting the requirements of this section.

(4) Commercial seed treatment and elevator pest control applicators, whether at farm sites or their own business locations, vertebrate pest control applicators using ground applied baits and public utility, and non-commercial applicators applying pesticides in or on properties managed by them are exempt from the financial responsibilities required in ARM 4.10.101 through 4.10.103. Demonstration and research pest control applicators may be exempt from the financial responsibilities required in ARM 4.10.101 through 4.10.103 upon appropriate application for exemption duly approved by the department. The department will evaluate each applicant's situation as shown on the waiver application considering particularly the following factors: actual pesticide applications by the applicant, the use of co-operators, the size of plots, and the hazards and drift potential of pesticides utilized. All applicators shall comply with the requirements in ARM 4.10.104 through 4.10.108, inclusive.

(5) An applicator whose financial responsibility requirements has been increased, but who has, for two consecutive spray seasons, operated without any pesticide accidents or occurrences of pesticide damage, may make application to the department to be allowed to revert back to the minimum financial responsibility requirements of ARM 4.10.101.

4.10.102 TYPES AND CONDITIONS OF FINANCIAL RESPONSIBILITY (1) In meeting the financial responsibility requirements of ARM 4.10.101, applicant shall have the option to utilize and provide any one or more of the following means: (a) policy of liability insurance; or (b) a surety bond; or (c) by a deposit of cash, or certificate of

deposit, or deposit of bond or other obligations for the payment of which the full faith and credit of the United States or of this state are pledged, and which has the capability of being directly converted to legal tender by this department, and approved by the department, conditioned to indemnify the people of the state of Montana for all damages to property and/or injury or death to any person or persons as set forth in ARM 4.10.101. After a deposit is made pursuant to (c) above, and after a license has been issued conditioned thereon, the deposit may not be withdrawn except with the prior written consent of the department and any unauthorized withdrawal or attempt to so withdraw may subject all persons involved with the withdrawal or any attempt thereof, to a charge of violating section 80-8-306 (1) MCA.

(a) The insurance policy or surety bond options shall only be approved if issued by an insurance company or bonding company currently qualified to do business in the state of Montana, and which provides for chemical damage responsibility for each and every chemical or pesticide the applicator may choose to apply.

(b) The total aggregate liability of each insurer or surety for claims shall be limited to the face amount of the policy or surety bond, and not exceeding the limits of each applicant under ARM 4.10.101 in the event the face amount of the policy or bond exceeds the required limits, for the current year together with all unresolved or unpaid claims, timely filed, pending from previous calendar years coverage.

(2) The department may accept a liability insurance policy in the proper face amount that contains a deductible clause in an amount not to exceed five hundred dollars (\$500.00) for all applicators. The department may allow a deductible greater than \$500 if an applicant submits documentation that a deductible of \$500 or less is not available from any insurer. This exception shall only be based upon the lack of availability of the established deductible, not the increase or decrease in premium value of a higher deductible. When the deductible is greater than \$500, the applicator shall be required to obtain a bond or an indemnity as specified in ARM 4.10.102(1)(c) for any amount greater than \$500. If the licensee has not satisfied the requirements of the deductible amount of any prior damage claim, such deductible clause in a currently submitted policy shall not be accepted by the department to satisfy the licensing requirements unless and until the applicant satisfies the prior damage claim. Insurance policies may have the pollution exclusion clause removed.

(3) The financial responsibility requirement imposed by ARM 4.10.101 must be maintained in full force and effect during each entire licensing period, except as provided in ARM 4.10.108. In the event of a lapse or termination in the means assuring financial responsibility, the applicator's license(s) shall automatically terminate, coincidental in time with the lapse or termination of financial responsibility, and the licensee shall immediately cease all applications of pesticides, and without further notice shall immediately return to the department, in person or by certified mail, all licenses issued to him and/or his employees for the current calendar year; and failure to so return shall constitute a violation under ARM 4.10.208. In the event a previously licensed applicator whose license(s) was terminated by the provisions of this rule desires to have his license reissued for the balance of the calendar year, he shall file a new application, accompanied by a new filing fee, and demonstrate to the satisfaction of the department that he once again meets the financial responsibility requirements of

ARM 4.10.101 and upon re-approval by the department, his license(s) may be reissued unless some other legal or regulatory cause exists for non-issuance.

4.10.103 APPROVAL, MODIFICATION, AND CANCELLATION OF FINANCIAL RESPONSIBILITY ELEMENTS

(1) The department shall ascertain that the means establishing financial responsibility filed by the applicant fully complies with the act, and fully satisfies the rules adopted thereunder, prior to issuance of any license. The information demonstrating financial responsibility shall be submitted on forms of the type approved by the department. License application approval shall not be granted until a complete copy of the bond, verification of the indemnity trust fund deposit, or a certificate or binder of insurance coverage is filed along with the license application. The licensee shall provide a complete copy of the insurance policy upon written request of the department. In the event the applicator options to utilize a liability insurance policy as the means of establishing financial responsibility, then and in that event, the applicator has the duty and responsibility, to ascertain that the policy proposed to be submitted provides chemical damage coverage for every pesticide proposed to be applied during the licensing period. In the event applicator's proposed policy of insurance contains exclusions against coverage of one or more chemicals applicator proposes to apply, then and in that event, the applicator may submit the proposed insurance policy to provide such coverage as it affords but the applicator must, in addition thereto, provide evidence of financial responsibility to indemnify the public against chemical damage arising out of the use, misuse, or attempted use of each and every chemical proposed to be used or applied which is excluded from coverage of the proposed liability insurance policy. The amount of additional coverage shall be in the minimum amount required under ARM 4.10.101 and the means to be utilized shall be the options provided in ARM 4.10.102 (1) (b) or (c).

(2) The department shall be notified by registered mail ten (10) days prior to any proposed modification of the liability insurance policy or surety bond requested by the licensee. Such modification must be approved by the department before the proposed modification can become final. Ten (10) days notice by registered mail to the department is required prior to the surety or insurer canceling the licensee's surety bond or liability insurance, and prior to settlement of claims made against licensee's bond or insurance. Modification of the indemnity trust fund, for any reason by any party, shall not be completed until the department has approved the proposed modification by written authorization to the licensee and the bank, trust, or other financial official or institution.

(a) If the financial responsibility is to be canceled, the requirements and procedures established in ARM 4.10.108 shall be followed.

4.10.104 JUDGEMENT OF DAMAGES AND/OR INJURY (1) A judgement rendered in any court of competent jurisdiction, of this state or any other state, or of the United States, against a licensee or certificate holder, upon a cause of action arising out of any pesticide use, misuse, or attempted use or application, filed with the department; and a written agreement, mutually agreed upon between the licensee and the individual experiencing property damage or bodily injury, as to the fact of damages and the dollar

value thereof, duly notarized and filed with the department, are for all purposes within these rules, denominated as judgements.

(2) No licensee nor certificate holder shall permit any judgement against him for damages or injury arising out of his pesticide operation to remain unsatisfied for a period of more than thirty (30) calendar days.

(3) Individuals experiencing non-crop vegetative damage, may upon mutual agreement with the licensee, reduced to writing, duly notarized, filed with the department, delay the final determination of the dollar amount of damage, and judgement thereon, for a period of time, not to exceed one year from the date damage is first observed by the damaged party.

(4) Individuals experiencing crop damage may, upon mutual agreement with the licensee, reduced to writing, duly notarized, filed with the department, delay the final determination of the dollar amount of crop damage for a period of time, not to exceed sixty (60) days following the completion of harvest on the crops and fields allegedly damaged, provided that the licensee and the individual experiencing crop damage provide an estimate to the department of the approximate dollar value of the damages, and if necessary, that the licensee provides evidence of damaged party for the estimated damages and still maintain his minimum required financial responsibility under ARM 4.10.101.

4.10.105 INCIDENT REPORTS AND RECORDS (1) An applicator who through his own actions or omissions, or the actions or omissions of his employees, causes or allows any pesticide to escape onto or to be deposited onto the person, lands, or property of another not the person hiring or contracting for his services, shall be required to file a written report to the department within forty-eight (48) hours of the incident, specifying the location of the incident, the name of the pesticide involved, the type of formulation, the method of application, the name and address of the person for whom the application was being made, and the name and address of the person(s) whose land, person, or property was subjected to the unintentional pesticide application. (In addition, if the pesticide is classified as either extremely toxic or highly toxic to people or animals, the applicator or operator shall immediately cease his application and notify the landowner or operator whose land, person, or property was subjected to unintentional pesticide application and the department, immediately, by the quickest available means, after applying first aid or personal decontamination if appropriate.)

(2) A complete record of all settled and pending claims from the preceding licensing period must be filed when reapplying for an applicator's license. The record shall indicate for each and every incident the names of all parties involved, the location of the incident, the manufacturer and the technical name of the pesticide involved, the type of formulation, the method of application, the intended use, and the target or site, specifying the animals, wildlife, plant and aquatic life, soil, or people subjected to the unintentional pesticide application(s).

(3) For settled claims, report the information required in (2) above, together with the dollar amount of the economic loss and the final settlement agreement between all parties.

(a) Applicants failing to file the foregoing reports, or falsifying them in any fashion, shall be subject to immediate revocation of current licenses and/or shall not be issued a license until the requirements of this section are fully satisfied.

4.10.106 REVOCATION OF LICENSE (1) The department shall revoke the license(s) of any applicant not satisfying the final judgement rendered against or agreed to by him, within thirty (30) calendar days from the date the judgement is filed with the department or in the same time period established in the judgement. The revocation shall remain in effect and no license shall be issued to the applicant unless and until the judgement is satisfied or until the applicant files with the department his written direction to his financial responsibility guarantors to respond in full to the damages specified in the judgement.

(2) In the event the financial responsibility guaranteed is not adequate to satisfy the judgement when fully applied thereto, then, and in that event, the applicant shall apply such additional monies or assets as may be required to fully satisfy the judgement, and the applicant's license shall not be issued until the judgement has been fully satisfied and the required financial responsibility once again brought up to the amount required of the particular applicant under rule.

4.10.107 PERSONAL LIABILITY FOR DAMAGES (1) Nothing in these regulations shall be construed to relieve any person, landowner or applicant, from liability for any damage to the person, lands, or property of another, caused by their use of pesticides even though such use conforms to the rules of the department.

4.10.108 LICENSING PERIOD (1) The licensing period shall be from the date of license issuance through December 31 of that calendar year. An applicant who applies pesticide seasonally may cancel his financial responsibility (in effect, canceling his license) sixty (60) days after the date of his last application. The sixty (60) day requirement may be waived if his means of providing financial responsibility is such that it provides effective ongoing coverage during the period of time a damage action could be maintained under statute of limitation section 27-2-204 and/or 27-2-207 MCA.

(2) An applicant who provides an indemnity trust fund as his means of establishing financial responsibility may cancel his financial responsibility sixty (60) days after the date of his last application. Cancellation of an indemnity trust fund may be accomplished by submitting a notarized statement to the department, for its discretionary approval, declaring that there are no known claims pending or judgement unsatisfied.

(a) The fact that an applicant obtains a cancellation of his indemnity trust fund in no way is to be construed as absolving an applicant from a suit nor claim of damages filed in a court of competent jurisdiction within the time provided by statute of limitation sections 27-2-204 and/or 27-2-207 MCA.

Sub-Chapter 2
Pesticide Applicator and Operator Rules

4.10.201 PESTICIDE APPLICATOR LICENSING REQUIREMENTS (1) An individual who by contract or for hire uses or applies pesticides not under the special supervision of a licensed applicator is required to become a licensed commercial pesticide applicator, except as provided for in these rules. Each pesticide applicator business location must have a licensed pesticide applicator. Any owner or person who has a financial interest in a pesticide applicator business may appoint a partner or salaried employee to become the licensed pesticide applicator. The owner or person having the financial interest in a pesticide application business shall continue to assume and is financially responsible for all uses and applications of a pesticide. The owner, manager, or licensed applicator of a pesticide applicator business may elect to have some or all of the employees of the business licensed as applicators.

(2) A person shall apply for a license on the department's application form. The application shall be completed in its entirety, accompanied by the licensing fee and a completed statement of financial responsibility. Applicants submitting incomplete applications and not meeting the conditions and standards expressed in the Act and department rules will be notified of such deficiencies and the procedure for correcting the deficiencies. The department will return the application along with the notice.

(3) Non-resident applicants shall be required to submit the license application, fee, financial responsibility and a completed form provided by the department designating an agent for service of process in the state. The form shall be accompanied by the appropriate fee for filing payable to the secretary of state. The service of process shall remain valid until canceled or modified.

(a) A non-resident corporation, which has an effective certificate of process shall appoint its own resident agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the agent or attorney. Service of process for these corporations shall apply to all employees transacting business in the state. The corporation shall provide to the department a list of its employees and subsequent revisions of the list for those employees licensed or to be licensed as pesticide applicators.

(b) A non-resident individual or partnership may designate the secretary of state as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the secretary of state. Service of process for individuals or partnerships shall apply to all employees transacting business in the state. The individual or partnership shall provide to the department a list of the employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide applicators.

(c) A non-resident corporation which does not have an effective certificate of authority from the secretary of state to transact its business in Montana and which does not transact business in Montana so as to require it to procure such a certificate of authority may designate the secretary of state as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made on the secretary of state shall constitute valid service. Service of process for

corporations shall apply to all its employees transacting business in the state. The corporation shall provide to the department a list of its employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide applicators.

(4) An individual applying for a public utility applicator's license or certification-license shall be required to meet the same conditions and standards established within these rules for commercial applicators. For purposes of this subchapter, "public utility" means any governmental organization supplying water, electricity, transportation, etc. to the public, including utilities operated by a private entity under governmental regulation.

(5) An individual applying for a government applicator's license or certification-license shall be required to meet the conditions and standards of these rules except for those specifically exempted in the Act. The department may accept for certification those federal employees certified through an EPA approved federal agency certification program or if the employee has been certified by another state with comparable requirements and standards of the department. The department reserves the responsibility to require federal employees to meet any special state certification standards.

(6) Those individuals who cannot be classified as a commercial, public utility, or government certified pesticide applicator or who cannot be classified as a farm applicator, but desire the use of restricted use pesticides, shall be considered to be certified non-commercial applicators.

(a) The non-commercial applicators desiring to use restricted use pesticides in the state shall be required to meet the same application, examination, qualification, general and specific competency standards, recordkeeping, requalification, and other related pesticide usage and application standards as required of commercial applicators by the Act.

(b) These individuals shall be classified into one of the categories established for commercial applicators.

(c) Certified non-commercial applicators may only use restricted use pesticides on lands owned, rented, or leased by his/her employer or himself/herself.

(d) Non-commercial applicators, whether certified or not, violating the Act or these rules shall be subject to the same penalties and administrative procedures as commercial applicators.

(7) No licenses or certification-licenses shall be issued to any person until the application, fees and all examination or requalification requirements are fulfilled and approved by the department.

(8) A licensed pesticides applicator changing his employment to another company or business within a licensing period shall be required to submit his license and any employee licenses referenced to his license to the department for cancellation. The applicator, by submission of a written request or application, may request the issuance of a new license. If the applicator paid the license fee, the department will reissue the license. If the company or business originally employing the applicator paid the license fee, the department shall not reissue the applicator's license until the fee is paid by the applicator or the applicator's new employer. If the original company paid the licensing fee, the department will credit the fee to the company for issuance of another applicator's license within the same licensing period. Provided that the license shall not

be issued until the applicant passes the required written examination or is already an approved applicator. Licenses and licensing fees shall not be transferable between licensing periods.

(9) An applicator not renewing and maintaining his license and qualification within the established qualification period shall be required to retake and pass the complete examination series prior to the issuance of a new license at the beginning of the next qualification period. The applicator may maintain his qualifications by attending approved requalification programs for a time period not to exceed four years. The applicator will be required to maintain his records of requalification for submission to the department for relicensing. The department reserves the right to require special examination(s) on new requirements or technology.

(10) Applicators and their employees licensed as applicators or operators shall reveal their license upon request by any individual or business, for whom the applicator or his employee is performing pesticide applications or to an authorized representative of the department.

(a) When an applicator terminates his employment, transfers his license, or modifies or cancels his license, all employee operator licenses issued under the applicator's name and license are terminated, modified, or canceled. Employees licensed as applicators may retain their license provided that their financial responsibility is still valid. New licenses will be issued to employee operators previously licensed or qualified once the business has appointed a new supervisory licensed applicator.

4.10.202 CLASSIFICATION OF PESTICIDE APPLICATORS (1) All applicants applying for a pesticide applicator's license required by 80-8-203 and 80-8-213 MCA, or desiring a license, shall be classified as either a commercial pesticide applicator, public utility applicator, government pesticide applicator, or noncommercial applicator as defined in ARM 4.10.201. Applicants shall be further classified either as individuals using only general use pesticides or as persons using general and restricted use pesticides.

(a) An applicant using general use pesticides shall be classified as either a licensed commercial, public utility, or government pesticide applicator.

(b) An applicant using general and restricted use pesticides shall be classified as either a certified-licensed commercial, public utility, government, or noncommercial pesticide applicator.

(2) A person, whether commercial, public utility, government, or noncommercial licensed or certified-licensed, aerial or ground, shall be further classified into one or more of the specific classifications set forth in this rule. The specific classification(s) shall determine the type, substance, and comprehensiveness of each applicant's examinations and the areas, classes of pesticides, and conditions by which the applicant may conduct pesticide operations.

(a) A person licensed as an applicator may use general use pesticides for which he is qualified throughout the state. A person certified-licensed as an applicator may use general and restricted use pesticides for which he is qualified throughout the state.

(i) A licensed commercial applicator may use a restricted pesticide under the following conditions:

(A) under the special supervision of a certified-licensed applicator; or
(B) under the direct supervision of a certified-licensed applicator but within 100 miles of the certified applicator.

(ii) A licensed government applicator may use a restricted pesticide under the following conditions:

(A) special supervision of a certified-licensed applicator; or

(B) direct supervision of a certified-licensed applicator but within the respective jurisdiction of the certified applicator.

(b) The department shall determine and classify each applicant into the most appropriate specific classification that reflects or describes the applicant's business or operation. Applicants may be classified and licensed into more than one specific classification if they meet and satisfy the requirements of each specific classification.

(c) The following specific classifications set forth in this rule do not apply to the following individuals for purposes of this regulation:

(i) individuals conducting laboratory-type research involving restricted use pesticides; and

(ii) doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the course of their normal practice.

(3) The following classifications are:

(a) Agricultural pest control classification includes any applicator using or supervising the use of pesticides in the following subclasses:

(i) Plant classification includes any applicator using or supervising the use of pesticides in the production of agricultural crops, including without limiting the foregoing: small grains, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and non-crop agricultural lands.

(ii) Animal classification includes any applicator using or supervising the use of pesticides on animals including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying restricted use pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in a large scale use of restricted pesticide are included in this classification and must be certified-licensed.

(iii) Vertebrate classification includes any applicator using or supervising the use of pesticides in the management of vertebrate animals normally wild or feral, including certain predators, rodents and birds, which may adversely affect man's health or property or are a nuisance to man.

(b) Forest pest control classification includes any applicator using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.

(c) Ornamental and turf pest control classification includes any applicator using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

(d) Seed treatment and elevator pest control classification includes any applicator using or supervising the use of pesticides onto seeds, the use of fumigants in seed storage areas or on or in seeds and the use of pesticides in or around the elevator seed storage facilities.

(e) Aquatic pest control classification includes any applicator using or supervising

the use of pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in classification (3)(i).

(f) Right-of-way pest control classification includes any applicator using or supervising the use of pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(g) Industrial, institutional, structural, and health related pest control classification includes any applicator using or supervising the use of pesticides in, on, or around food handling and manufacturing establishments, human dwellings, institutions such as schools and hospitals, industrial establishments including warehouses, and any other structures and adjacent areas, public or private, and for the protection of stored, processed, or manufactured products.

(i) School integrated pest management (IPM) classification includes any applicators using or supervising the use of pesticides in the school environment under a "Model School Integrated Pest and Pesticide Management Safety Program," including but not limited to school yards, buildings, playing fields, and other property under the jurisdiction of the school districts.

(h) Wood product pest control classification includes any applicator using or supervising the use of pesticides for pole framing, sill applications, some home and farm uses, brush on treatments, sapstain control, and uses in non-pressure treatment plants for the protection of wood products.

(i) Public health pest control classification includes state, federal, or other governmental employees or contracted commercial applicators using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance. The jurisdictional health officer, state veterinarian, their duly authorized representatives, and governmental research personnel are exempt from licensing when applying general use pesticides to experimental areas.

(j) Regulatory pest control classification includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests. The following subclassifications of government applicators are established to more accurately reflect some government applicator's specific duties and areas of operation:

- (i) mosquito abatement;
- (ii) predator;
- (iii) quarantine;
- (iv) rodent;
- (v) weed
- (vi) school IPM; and
- (vii) piscicide.

(k) Demonstration and research pest control classification includes:

(i) individuals who, as part of their business or job responsibility, demonstrate to the public the proper use of pesticides and pesticide application techniques or supervise such demonstrations or make or approve recommendations on pesticide product use and/or selection. Such individuals may include extension specialists, county extension agents, government employees, representatives of pesticide manufacturers or related businesses. Not included are individuals licensed as a pesticide dealer or individuals

that make recommendations for pesticide products used only for home, yard, lawn, or garden use; and

(ii) individuals conducting field research with pesticides and in doing so, use or supervise the use of pesticides. Such individuals includes state, federal, commercial, and other individuals conducting field research on or utilizing pesticides. Demonstration and research applicators shall qualify in one or more of the classifications in (3)(a) through (j) that best represents their operations or responsibilities.

(1) Special utility classification includes applicators using or supervising the use of pesticides in the maintenance of utility rights of way, substations, and pole conditioning or other similar areas.

(m) Piscicide classification include applicators using or supervising the use of pesticides purposefully applied to waters to eliminate fish species as a fishery management tool.

4.10.203 COMPETENCY STANDARDS FOR LICENSING AND CERTIFICATION- LICENSING OF PESTICIDE APPLICATORS

(1) An individual applying for a commercial, public utility, governmental, or noncommercial applicator's license or certification-license shall be required to pass a written examination prior to issuance of a license or certification-license.

(a) Examinations may be taken at the department's Helena office or the applicant may make arrangements for examination at other locations in the state or in other states at the convenience and approval of the department.

(b) Any individual applying for a license or a certification-license shall meet the general and specific competency standards of ARM 4.10.204 and 4.10.205.

(c) The competency of applicants shall be determined by their knowledge and passage of written examinations on the subjects set forth in the department's designated manuals for applicators, including revisions, and any other manual, guide, or materials as designated by the department. Examination questions will be derived from these manuals and their degree of difficulty will be based upon the degree of importance established by the department for the various subject areas:

(d) The department may accept the applicant's examination scores from other states if the examination or examinations are equivalent to the department's examination. However, all other standards and requirements of the department must be met by the applicant. All out-of-state applicators will be required to take and pass an examination based on the Montana Pesticide Act and these rules. The scores required are set forth in (3)(a) and (b).

(2) An applicator's examination shall consist of:

(a) A basic examination consisting of, but not limited to, questions based on pesticide laws, rules, regulations, definitions, labeling, safety, toxicology, effects on animals, plants, and the environment, safety equipment, first aid, and alternatives to chemicals.

(b) A specific examination or examinations consisting of, but not limited to, questions based on the pests to be controlled, various control methods, pesticides utilized, environmental and safety considerations, pesticide formulations, and equipment calibration and maintenance, in the specific classification or classifications the applicator chooses for licensing or certification-licensing.

(3) The minimum passing score for applicants shall be: (a) In the case of applicants qualifying for general use pesticides, seventy percent (70%) for the basic examination, and seventy percent (70%) for each respective specific examination required.

(b) In the case of applicants qualifying for restricted use pesticides, eighty percent (80%) for the basic examination, and eighty percent (80%) for each respective specific examination required.

(4) An applicant not receiving a passing score on one or more of the examinations shall be required to retake and pass the failed examination(s) prior to issuance of a license. The applicant taking more than one specific examination may elect to be licensed only for the specific examination(s) passed if the applicant has passed the basic, and at least one specific examination.

(a) Applicants failing the basic examination or any other examination the first time shall not be allowed to retake the examination(s) for seven (7) days after notification of failure. Applicants failing the examination(s) a second time may retake the examination(s) fifteen (15) days after notification. Applicants failing the examination(s) a third time shall not be allowed to retake the examination(s) until the next licensing period beginning January 1 of the next year. Re-examination may be taken at the department's Helena office or the applicant may make arrangements for reexamination at other locations in the state or in other states at the convenience and approval of the department.

(5) Applicants shall be required to requalify for licensing prior to every fifth licensing period.

(a) The department has a staggered four-year requalification time period designated by applicator classification and subclassification. Applicator classifications will requalify by December 31 of the year designated by the department. Thereafter the qualification period extends from January 1 through December 31 of the next four-year cycle.

(b) Applicator requalification shall be accomplished by either passing the complete examination series or by attending 12 hours of training approved by the department. Courses must be either six, five, four, three, or two hours. An applicator requalifying for licensing by attending pesticide training courses must have written verification of his/her attendance.

(6) The department retains the right to approve or disapprove training courses relative to meeting the qualifications for re-licensing. Training course sponsors must petition the department for approval of their courses at least 30 days prior to being held. The petition must include dates, time, location, projected attendance, speakers and a synopsis of their presentations.

(7) The department may require applicants to pass an examination during any licensing period on new pesticide technology which applies to the applicator's classification.

4.10.204 GENERAL STANDARDS OF COMPETENCY FOR ALL APPLICATORS

(1) All commercial, public utility, and government applicants shall demonstrate by written examination and, as appropriate, performance testing, practical knowledge of the principles and practices of pest control and safe use of pesticides. Examination shall be based on knowledge and examples of problems and situations appropriate to

the applicator's classification or subclassifications and the following areas of competency for which a license or certification-license is desired:

- (a) Label and labeling comprehension:
 - (i) the general format and terminology of pesticide labels and labeling;
 - (ii) the understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
 - (iii) classification of the product, general or restricted;
 - (iv) necessity for use consistent with the label.
- (b) Safety factors including:
 - (i) pesticide toxicity and hazard to man and common exposure routes;
 - (ii) common types and causes of pesticide accidents;
 - (iii) precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
 - (iv) first aid and other procedures to be followed in case of a pesticide accident;
 - (vii) proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.
- (c) Environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
 - (i) weather and other climatic conditions;
 - (ii) types of terrain, soil, or other substrate;
 - (iii) presence of fish, wildlife, and other non-target organisms;
 - (iv) drainage patterns.
- (d) Pest factors such as:
 - (i) common features of pest organisms and characteristics of damage needed for pest recognition;
 - (ii) recognition of relevant pests;
 - (iii) pest development and biology as it may be relevant to problem identification and control;
- (e) Pesticides factors such as:
 - (i) types of pesticides;
 - (ii) types of formulations;
 - (iii) compatibility, synergism, persistence, and animal and plant toxicity of the formulations;
 - (iv) hazards and residues associated with use;
 - (v) factors which influenced effectiveness or lead to such problems as resistance to pesticides;
 - (vi) dilution procedures.
- (f) Equipment factors (relevant to applicator's operation) including:
 - (i) types of equipment and advantages and limitations of each type;
 - (ii) uses, maintenance, and calibration.
- (g) Application technique factors including:
 - (i) methods and procedures used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique of application to use in a given situation;
 - (ii) relationship of discharge and placement of pesticides to proper use,

unnecessary use, and misuse;

(iii) prevention of drift and pesticide loss into the environment.

(h) State and federal laws, regulations, and rules.

4.10.205 SPECIFIC STANDARDS OF COMPETENCY FOR EACH APPLICATOR CLASSIFICATION

(1) Licensed or certified-licensed commercial, public utility, and government, and noncommercial pesticide applicators shall be particularly examined and qualified with respect to the practical knowledge standards elaborated below:

(a) Agricultural pest control applicators may be classified into one of three areas:

(i) Plant applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, non-target injury, and community problems resulting from the use of pesticides in agricultural areas.

(ii) Animal applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge concerning specific pesticide toxicity and residue potential is also required since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

(iii) Vertebrate applicators must demonstrate practical knowledge of vertebrates for which they may be using pesticides. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. The applicator must demonstrate a practical knowledge of control and application methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. These applicators must demonstrate knowledge of the use of these pesticides which will minimize or prevent hazards to humans, pets, and other domestic animals.

(b) Forest pest control applicators shall demonstrate practical knowledge of the types of forest, forest nurseries, and seed production in their state and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge of the relative biotic agents and their vulnerability to the pesticides to be applied is required. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may be related to meteorological factors and adjacent land use.

(c) Ornamental and turf pest control applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential

phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this classification must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(d) Seed treatment and elevator pest control applicators shall demonstrate practical knowledge of the types of seeds that require pesticide protection against pests, and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels as well as proper disposal of unused treated seeds. Applicators must demonstrate proper use of grain fumigants to protect seeds, knowledge of the safe handling and application techniques, worker exposure and protection considerations, and reentry standards into fumigated structures. They must demonstrate practical knowledge of using herbicides around and rodenticides and avicides in and around these structures.

(e) Aquatic pest control applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this classification. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

(f) Right-of-way pest control applicators shall demonstrate practical knowledge of a wide variety of environments since right-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way areas, and the impact of their application activities in the adjacent areas and communities.

(g) Industrial, institutional, structural, and health related pest control applicators must demonstrate a practical knowledge of a wide variety of pests and their life cycles, types of formulations appropriate for their control, and methods of application that avoid contamination of food, damage and contamination of habitat and exposure of people and pets. Since human exposure includes babies, children, pregnant women, and elderly people and is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this classification. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.

(i) School integrated pest management applicators must demonstrate a practical knowledge in the principles of integrated pest management and a knowledge of pesticides registered for use in the school environment, in addition to the knowledge

required by applicators in the industrial, institutional, structural, and health related category.

(h) Wood product pest control applicators shall demonstrate practical knowledge of the specific wood preservative products used in their operation (creosote, pentachlorophenol, inorganic arsenicals). They shall be knowledgeable about the protective clothing and equipment requirements and the requirements for proper care and disposal of work clothing and equipment. They shall demonstrate practical knowledge of application techniques which will prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of the prohibitions against eating, drinking and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of hazards of handling treated products as well as the requirements for proper disposal of pesticide waste. They must be familiar with the Consumer Awareness Program [CAP] which will be implemented through the use of Consumer Information Sheets [CIS's] provided to the end users of the products (consuming public).

(i) Public health pest control applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests are involved. It is essential that they be known as recognized and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

(j) Regulatory pest control applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. In the case of some federal agency applicators, their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgements must be made in new situations.

(k) Demonstration and research pest control applicators demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide use. Many different problem situations will be encountered in the course of activities associated with demonstrations. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all the standards detailed in ARM 4.10.204. In addition, they shall meet the specific standards required for classifications in (1)(a) through (g) applicable to their particular activity. Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards required for

classifications in (1)(a) through (j) applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration."

(1) Special utility pest control applicators shall demonstrate practical knowledge of a wide variety of utility right-of-way environments. They shall demonstrate practical knowledge of problems on runoff, drift and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and soil sterilants, the need for containment of these pesticides within the designated areas, and the impact of their application activities in the adjacent areas. They shall demonstrate practical knowledge of the specific wood preservative products used in their operation. They shall be knowledgeable about the protective clothing and equipment requirements and the requirements for proper care and disposal of work clothing and equipment. They shall demonstrate practical knowledge of application techniques which will prevent direct exposure to domestic animals and livestock, or in contamination of food, feed or drinking and irrigation water. They shall be aware of the prohibitions against eating, drinking and smoking and other potential avenues of work exposure while applying wood preservative chemicals. They must demonstrate practical knowledge of hazards of handling treated products as well as the requirements for proper disposal of pesticide waste.

(m) Piscicide pest control applicators shall demonstrate a knowledge of registered piscicides, and safety practices for use, storage and transportation. They shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this classification. They shall demonstrate practical knowledge of various water use situations, the potential of downstream effects and piscicide decontamination procedures. They must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organism which may be present in aquatic environments. They must show practical knowledge of water chemistry, pest identification, and the ecology within the aquatic environment. Applicators must also have knowledge of applicable laws and regulation related to introduction of pesticides into state waters, and demonstrate practical knowledge of the principles of limited area application.

4.10.206 INDIVIDUALS REQUIRING A PESTICIDE OPERATOR'S LICENSE

(1) Employees of licensed or certified-licensed applicators under certain conditions of use for general and restricted use pesticides shall be required to become licensed pesticide operators. Provided that only one certified-licensed applicator, licensed applicator or licensed operator shall be required for each spraying equipment unit when in actual operation. Application for an operator's license shall be made on a standard application form provided by the department.

(2) Licensed operators shall be allowed to use and apply only those pesticides that the licensed or certified-licensed applicator he is supervised by is qualified to use and apply. A licensed operator may use general or restricted use pesticides within one hundred (100) miles of the applicator when he is under the direct supervision of a licensed or certified-licensed applicator, respectively. Licensed operators may not apply general or restricted use pesticides beyond one hundred (100) miles of the applicator.

(3) An individual may under certain conditions be licensed as a non-commercial

operator under the direct supervision of a certified-licensed non-commercial applicator. In these cases, the licensed operator may use restricted use pesticides under the direct supervision of the certified-licensed applicator provided that the uses of the pesticides are restricted to any of the employer's premises or materials on the premises, and that the treated materials are not sold to the general public.

(4) Applicator employees required to become licensed operators shall make application for license on a form approved by the department. The license fee shall be twenty-five dollars (\$25) per applicant, provided that only the first two operator applicants per applicator business shall have to pay the twenty-five dollars (\$25) licensing fee. Thereafter, the fee per additional applicant shall be ten dollars (\$10). Fifteen dollars of the fee for each of the first two operators and \$5 of the fee for each additional operator shall be deposited in the state special revenue account as required by 80-8-205 MCA.

(5) Individuals using and applying general or restricted use pesticides shall qualify for an operator license by:

(a) passing a department examination;

(b) attending a department training course; or

(c) receiving training from a certified-licensed or licensed applicator of the business or government agency who must certify the individual's completion of the training.

(6) The training or examination shall include knowledge of pesticide law and rules, labels and labeling, safety, first aid and toxicology, effect of pesticides, factors affecting pesticide application, equipment calibration, dilution and mixing of pesticides, recognition of common pests to be controlled. The examination or training for operators shall be as specific as possible to their operations and responsibilities. Examinations will be given at the convenience and approval of the department or its authorized representative. The department shall cooperate with individual applicators or groups of applicators in establishing the training materials and examination questions, and may provide assistance to applicators in training applicants for an operator's license. The passing score for the examination shall be seventy percent (70%). Operators who pass the examination may not be required to pass another examination. Operators may renew their license each year by receiving in-service business or government agency training or by attending a training course approved by the department.

(7) Government operators shall meet all the standards established for commercial operators in this regulation. Government operators shall only operate within their respective governmental boundaries regardless of the number of miles from the government certified-licensed or government licensed applicator's business location.

4.10.207 RECORDS (1) All licensed, certified licensed commercial, public utility, government, certified non-commercial applicators and their operators shall be required to keep and maintain operational records for two (2) years. For every application performed either by an applicator or operator, the application record shall include:

(a) The name of the applicator or operator applying the pesticide. Initials or an assigned number are acceptable if the full name of the applicator or operator is cross-referenced and accessible to the department.

(b) The following items:

(i) date;

(ii) time should be specific;
(iii) location shall include the property owners or lessee's name and address, the county or counties in which the pesticide was applied. The specific application site shall be expressed by township, range and section numbers or local identifiable landmarks. Right-of-way applications may be expressed in general terms of identifiable landmarks. Non-agricultural applications may specify the site, building, facility, premise or other identifiable landmarks.

(c) If the same piece of equipment is used for all applications, then this equipment may be listed only once. If more than one piece of equipment is utilized, the applicator may assign a number to each piece of equipment and list the equipment once by description and thereafter by number.

(d) The pesticide or pesticides used which shall include the company name, trade name and the EPA registration number or the type of formulation.

(e) The rate of application includes the formulation rate and the diluent to be sprayed on a given unit area. Examples: 1 pint of product per 5 gallons of water per acre

(1 pt/5 gal water); 2 oz. of product per 1 gallon water (2 oz/1 gal water); 1 pint of product per 100 pounds of fertilizer per acre.

(f) The amount of area treated (number of acres, trees, livestock, square feet or yards, etc.) or for structural, seed treatment or wood product applications, indicate the type of treatment.

(g) The primary pest or pests involved.

(h) The crop or site treated and stage of crop development, if applicable.

(i) Weather conditions such as wind speed, direction and temperature if applicable. Outdoor applications generally require the recording of some weather conditions.

(2) Applicators utilizing two or more pesticides in a tank mixture shall be required to record all data as required for each pesticide in the tank mix.

(3) Applicators shall maintain application records on a daily basis not to exceed twenty-four (24) hours from the time of the last application.

(4) Applicator records shall be open to inspection by authorized employees of the department during all business hours. Applicators shall be required to submit written copies of their records or any portion of the records requested in writing by the department.

(5) Seed treaters and wood product treaters shall only be required to maintain records on the volumes of pesticides applied and the other items set forth in (1) (a), (b)(i)(d)(e) and (f).

(6) As ruled by opinion of the Montana attorney general (Vol. No. 38, Opinion No. 1), pesticide applicator and dealer records held by the department of agriculture are subject to public disclosure unless the department finds that the applicator's or dealer's right to privacy clearly outweighs the public's right to know. Such determination will be considered under department policy on a case by case basis.

(a) There will, however, be no department publication of any information of these records which may disclose operations of selling, production or use of pesticides by any person. Such prohibition has been declared under section 80-8-107 MCA and confirmed under department interpretation of a letter of explanation to the above cited opinion from the attorney general.

(7) (a) Applicators, upon written request of the department, shall submit to the department an accurate typed or printed record of each application performed with all restricted pesticides, or those restricted pesticides specifically named by the department. The records shall be submitted within fourteen (14) calendar days of the department's request or as otherwise requested by the department. The request for records may include the records for the complete calendar year. The records shall be submitted on the standard form provided by the department or on forms approved by the department. The record shall contain the following items listed in this rule: (1) (a), (b) (i), (iii), (d), (e), (f), (g), (h) and (2). The record may contain all the items listed in sections (1) and (2).

(b) If no applications of the restricted use pesticides are made during the requested time period, this shall be documented to the department.

(8)(a) Applicators shall submit to the department an accurate typed or printed report of their use of restricted and general use pesticides every fifth year beginning in calendar year 1990 and thereafter every five years. The report shall include a summary of use of these pesticides by county, month, total acreage, amount of the formulated product used, crop or site treated, the product used by company name and trade name, and the EPA registration number or the type of formulation for the fifth year only. The report shall be submitted to the department by January 31 of the next year. The report shall be submitted on the standard form provided by the department or on forms approved by the department.

(b) If no application of general and/or restricted use pesticides are made during the calendar year, this shall be so documented to the department.

(9) Farm applicators are exempt from the requirements of this rule, unless a specific reporting requirement is established in another rule.

4.10.208 INCONSISTENT USE No person shall, use or recommend use of a pesticide in a manner inconsistent with the registered labeling, or with the agency or department restrictions that have been placed on the use of that pesticide.

4.10.209 NOTIFICATION BY LICENSED OR CERTIFIED LICENSED APPLICATORS (1) Applicators applying environmental protection agency restricted pesticides shall notify the owner, lessee or manager of the property of all precautions and restrictions prior to application of the restricted pesticide. The applicator, if requested, shall provide a copy of the label to the owner, manager or lessee. Applicators applying environmental protection agency restricted pesticides in an easement or right-of-way situation shall not be required to notify any person if the applicator is employed by or specifically contracted by the person holding or managing the easement or right-of-way.

Sub-Chapter 3 Aquatic Herbicide Rules

4.10.301 SALE OR USE OF AQUATIC HERBICIDES PROHIBITED-- EXCEPTION (REPEALED)

4.10.302 SALE OF AQUATIC HERBICIDES (REPEALED)

4.10.303 USE OF AQUATIC HERBICIDES (REPEALED)

4.10.304 APPLICATION FOR PERMIT (REPEALED)

4.10.305 APPLICATOR RECORDS (REPEALED)

4.10.306 APPLICATOR INCIDENT REPORT (REPEALED)

4.10.307 AQUATIC PESTICIDE TRAINING CREDENTIAL (REPEALED)

4.10.308 PERSONAL LIABILITY FOR DAMAGES (REPEALED)

4.10.309 VIOLATIONS (REPEALED)

4.10.310 EXPIRATION DATE OF RULES (REPEALED)

4.10.311 DESIGNATION OF RESTRICTED-USE AQUATIC HERBICIDES

(1) The sale and use of aquatic herbicides that contain one or more of the following active ingredients intended for remission of aquatic vegetation, shall be designated as restricted-use:

- (a) xylene,
- (b) acrolein,
- (c) endothall.

4.10.312 SALE OF RESTRICTED-USE AQUATIC HERBICIDES (1) Only licensed pesticide dealers may sell a registered, restricted-use aquatic herbicide and only under the following conditions:

- (a) Sale or distribution can only be made to a certified applicator who holds an aquatic pest control license or permit issued by the department.
- (b) Each dealer must maintain a complete record of each restricted-use aquatic herbicide sale. These records must be retained for a period of two (2) years. Records shall include all requirements contained within ARM 4.10.504.

4.10.313 USE OF RESTRICTED-USE AQUATIC HERBICIDES (1) Only persons certified and holding an aquatic pest control applicator license or permit issued by the department may purchase, or use a restricted-use aquatic herbicide.

- (a) To initially qualify a person must attend a department approved aquatic herbicide training course and pass an aquatic herbicide examination.
- (b) To maintain qualifications for certification, all applicators, except farm applicators, must comply with ARM 4.10.203(5), MCA.
- (c) All farm applicators must attend one six (6) hour aquatic training course, or pass an aquatic herbicide examination to maintain qualifications. The permit issued will conform to the five year qualification period established for the district in which the farm applicator resides.

(d) The department may require additional training if significant changes occur in aquatic herbicide use patterns or aquatic vegetation control techniques.

4.10.314 APPLICATION OF RESTRICTED-USE AQUATIC HERBICIDES

(1) All certified licensed or permitted aquatic pest control applicators who plan to apply a restricted-use aquatic herbicide shall:

(a) Submit for approval a preseason aquatic vegetation management plan to the department by at least two (2) weeks prior to the first aquatic herbicide application. No applicator shall apply a restricted-use aquatic herbicide without management plan approval by the department. Management plan forms are available upon request from the department. The management plan must contain:

(i) a legible map of the ditch (preferably drawn on a USGS 7.5' topographic map or other appropriately detailed base map) area showing the location of:

(A) all ditch or canal segments, or other surface waters to be treated;

(B) all structures (flumes, siphons, wiers, waste gates, etc.) along treated segments;

(C) all state waters within the general area which treated waters parallel, cross or could potentially contaminate;

(D) all herbicide application points;

(E) all areas where treated water will be discharged;

(ii) application date(s);

(iii) herbicide to be used;

(iv) amount and rate of herbicide to be used;

(v) application techniques, and

(vi) weed(s) to be controlled.

(b) Maintain and update the plan as changes or modifications occur that differ from the original management plan submitted to the department. This management plan will remain on file at the department.

(c) If no changes in the management plan are anticipated, the applicator must still notify the department in writing of their intent to treat. This written notification will serve as that year's plan. A letter of approval from the department will still be required before the application may proceed.

(d) Allow an inspection of the treatment area by the department or its authorized agents prior to approval of the plan and application by the applicator. The department will notify the applicant of its decision for approval once any required inspections are completed. If the applicant desires an inspection of the treatment area, advance notice to the department of at least one (1) week is recommended.

(e) Consult the Montana department of fish, wildlife and parks prior to applying a restricted-use aquatic herbicide.

4.10.315 APPLICATOR RECORDS (1) All applicators, including farm applicators, must maintain and submit, upon request by the department, a record of each restricted-use aquatic herbicide application.

(a) These records shall include:

(i) name of the applicator and/or operator;

(ii) name of the ditch, canal, or area treated and county where located;

(iii) application point(s) and areas of ditch, canal or other surface waters treated;
(iv) company name, trade name, and the EPA registration number or formulation of the herbicide(s) used;

(v) date of application and amount and rate of herbicide used;

(vi) weeds controlled;

(vii) type of equipment used and method of application.

(b) These records will satisfy reporting requirements for all non-farm applicators described within ARM 4.10.207(1). The records required in ARM 4.10.315 will satisfy the requirements for applicators subject to ARM 4.10.208(8). Farm applicators are exempt from the reporting requirements of ARM 4.10.207(8).

4.10.316 APPLICATOR INCIDENT REPORT (1) Any person who, through their own actions or omissions or the actions or omissions of persons under their direction or control, causes or allows any restricted-use aquatic herbicide to escape into or be deposited into any public waters or private waters, or causes or allows any aquatic herbicide to escape onto or be deposited on any person, lands or property, shall provide notice to the department by the quickest means possible immediately following said herbicide misapplication or escape. The notice shall give the geographic location of the incident, the name of the pesticide involved and the name(s) and address(es) of the person(s) whose waters, land, person or property, including the state of Montana's, was subjected to the herbicide application.

4.10.317 PERSONAL LIABILITY FOR DAMAGES (1) Nothing in these rules shall be construed to relieve any person, including landowner or applicator, from liability for damage to the person, lands, water, or other property of another, including the state of Montana, caused by the use of aquatic herbicides even though such use conforms to the rules of the department.

4.10.318 VIOLATION (REPEALED)

Sub-Chapter 4 Certification of Farm Applicator Rules

4.10.401 FARM APPLICATOR CERTIFICATION (1) A farm applicator desiring to use and apply restricted use pesticides shall be required to make application for a special use permit or certificate on a form approved by the department. Each application form shall be completed in its entirety prior to processing by the department.

(a) Applicants, who have completed the application form, paid the fee, passed the required examination or have attended an approved training course and have taken an ungraded quiz at the conclusion of the course, shall be issued a certificate by the department to purchase and use restricted use pesticides. Passage of the required examination or attendance at a training course shall qualify applicators for five (5) consecutive years. The applicator's first requalification and recertification date will be based upon the staggered schedule established for the permit district in which the person resides.

(b) The certificate shall be in effect for five years from the date of issuance to

December 31 of the fifth year except as provided in (1)(a). Farm applicators may renew their certification to purchase and use restricted use pesticides by submitting their application and fee to the department.

(c) Training manuals and/or training materials for farm applicators will be designated by the department. If the applicator elects to qualify by examination, these training manuals and/or training materials will serve as the basis for the examination.

(2) The farm applicator examination or training standards, as a minimum requirement, shall include those set forth in 80-8-209(3) MCA.

(3) The farm applicant passing the examination or attending an approved training course shall be certified to use restricted use pesticides for the purpose of producing agricultural commodities. The passing examination score shall be seventy percent (70%).

(4) Certified farm applicators shall requalify for certification to use restricted use pesticides prior to issuance of a certificate. Requalification may be achieved by passing an examination or by attending six hours of training approved by the department. Each farm applicator qualification period shall conform to the established staggered system set forth in this rule. The qualification period of each district ends December 31 of the year indicated and every five years thereafter. A listing of counties within each district follows:

Flathead Lake Lincoln Mineral	DISTRICT I	2008 Missoula Ravalli Sanders
Beaverhead Broadwater Deer Lodge Gallatin Granite Jefferson	DISTRICT II	2004 Lewis and Clark Madison Meagher Park Powell Silver Bow
Blaine Cascade Chouteau Glacier Hill	DISTRICT III	2005 Liberty Pondera Teton Toole
Carter Custer Daniels	DISTRICT IV	2006 Prairie Richland Roosevelt

Dawson
Fallon
Garfield
McCone
Phillips
Powder River

Rosebud
Sheridan
Treasure
Valley
Wibaux

DISTRICT V

Big Horn
Carbon
Fergus
Golden Valley
Judith Basin
Musselshell

2007
Petroleum
Stillwater
Sweet Grass
Wheatland
Yellowstone

4.10.402 EMERGENCY PEST PROBLEMS (REPEALED)

4.10.403 CREDENTIALS (1) Certified farm applicators may request the department to issue credentials to two (2) members of his immediate family or employees allowing them to purchase and use pesticides under the applicator's certificate and supervision. A person in possession of such credentials shall only purchase for use and application restricted use pesticides for which the farm applicator is qualified and may only use such pesticides upon lands owned, rented, or leased by the farm applicator.

4.10.404 IMPROPER PURCHASE OR USE (1) No farm applicator, family member or employee shall use or recommend use of a pesticide in a manner inconsistent with registered labeling, or with any agency or department restrictions that have been placed on the use of that pesticide.

(2) No farm applicator, family member or employee shall purchase or use a restricted pesticide without either a permit or a credential. All applications made by family members or employees shall be under the direct supervision of a farm applicator.

(3) For the purposes of applying 80-8-209, MCA, the term "vicinity" will mean using nonrestricted (general use) pesticides on lands immediately adjacent or across a road from lands owned, leased or rented by the farm applicator doing the applications.

Sub-Chapter 5 Pesticide Dealer and Retailer Rules

4.10.501 APPLICATION FOR LICENSE (1) A person applying for a commercial pesticide dealer's license shall make application for the license on a standard application form provided by the department. Each application shall be completed in its entirety and the licensing fee paid prior to processing by the department. Incomplete applications will be returned to the applicant.

(2) Non-resident applicants shall be required to submit the license application, fee,

and a completed form of service of process in the state prior to processing the application by the department. The form shall be accompanied by the appropriate fee for filing, payable to the secretary of state. The service of process shall remain valid until canceled or modified.

(3) A non-resident corporation, which has an effective certificate of authority to transact its business in Montana, filing the service of process shall appoint its own resident agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the agent or attorney. Service of process for these corporations shall apply to all employees transacting business in the state. The corporation shall provide to the department a list of its employees, if more than one, the subsequent revisions of the list for those employees licensed or to be licensed as dealers.

(4) A non-resident individual or partnership may designate the secretary of state as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the secretary of state. Service of process for individuals or partnerships shall apply to all employees transacting business in the state. The individuals or partnership shall provide to the department a list of the employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide dealers.

(5) A non-resident corporation which does not have an effective certificate of authority from the secretary of state to transact its business in Montana and which does not transact business in Montana so as to require it to procure such a certificate of authority may designate the secretary of state as its lawful agent or attorney upon whom service of process may be made in such causes of action, and such service when so made shall be valid service on the secretary of state. Service of process for corporations shall apply to all employees transacting business in the state. The corporation shall provide to the department a list of its employees and subsequent revision of the list for those employees licensed or to be licensed as pesticide dealers.

(6) Pesticide dealer outlets with a licensed dealer shall be required to list the names and address of all their employee pesticide field men and salesmen employed directly out of the same outlet as the licensed dealer. These employees traveling and transacting pesticide sales in the state shall be required to possess and carry credentials stating that the employee is transacting business under the name and license number of a licensed dealer. The department will provide the necessary credentials to the licensed dealer for the field men and salesmen listed on the application. Dealers may request additional field men or salesmen credentials for new employees provided that the dealers shall return to the department any credentials for those employees terminated or no longer supervised by the dealer. Dealers and dealer field men or salesmen shall be required upon request to show their license or license credentials to any buyer of a pesticide or to employees of the department.

4.10.502 RETAIL SALE OF PESTICIDES (1) The retail sale of pesticides shall be limited to products:

- (a) labeled for only home, yard, lawn, and/or garden uses; and
 - (b) classified as general use.
- (2) Retail sales of pesticides not meeting these limitations shall be considered a

violation of the act. All retailers shall maintain for inspectional purposes, shipping, purchase, or invoice records of pesticide products received. These records shall be maintained for two (2) years.

4.10.503 PESTICIDE DEALERS REQUIREMENTS AND STANDARDS

(1) Licensed pesticide dealers may purchase, sell, offer for sale, or distribute any pesticide classified as general or restricted use registered in that state. Dealers will not be allowed to handle certain restricted pesticides which are registered for use, sale, or distribution by government agencies only.

(2) New applicants for a dealer license must pass a written examination prior to issuance of a license by the department. An applicant not receiving a passing score on the first examination and upon notification of failure, may retake the examination seven (7) days after notification. Applicants failing the second examination and upon notification of failure, may retake the examination fifteen (15) days after notification. Applicants failing the third examination shall not be allowed to retake the examination until the next licensing period beginning January 1 the next year. Applicants may be reexamined at the department's Helena office or the applicant may make arrangements for reexamination at other locations in the state or in other states at the convenience and approval of the department.

(3) Competency of applicants by written examination shall be determined by their knowledge of the subjects and materials set forth in the (Montana Pesticide Manual for Applicators and Dealers), including future revisions and any other manual, guide, or materials required by the department. Examination questions will be derived from these manuals. Their degree of difficulty will be based upon the degree of importance established by the department for the various subjects. The examination shall consist of but not be limited to questions on pesticide legislation; regulations and guidelines; safety and toxicology; disposal; storage and transportation; effects on animals, plants, and environment; fish and wildlife; alternatives to chemicals; pollinating insects; selection of control methods; factors affecting pesticide applications; classification and formulations of insecticides; fungicides, herbicides, and other pesticides and their uses; definitions; and recommendations for use of pesticides. The minimum passing examination score for applicants to be licensed as dealers shall be seventy-five percent (75%).

(4) Dealers shall be required to requalify for licensing prior to December 31, 1986, and by the end of every fourth year thereafter. Dealer requalification shall be accomplished by either passing a dealer examination or by attending 12 hours of training approved by the department. Courses must be either six, five, four, three, or two hours of training. A dealer attending pesticide training courses must have written verification of his/her attendance.

(5) The department retains the right to approve or disapprove training courses relative to meeting the qualifications for re-licensing. Training course sponsors must petition the department for approval of their courses 30 days prior to being held. The petition must include dates, time, location, projected attendance, speakers, and synopsis of their presentations.

(6) The department may require dealers to pass an examination during any licensing period on new pesticide technology.

(7) A dealer, not renewing and maintaining his license and qualification, within the established qualification period shall be required to retake and pass the examination prior to the issuance of a new license at the beginning of the next qualification period. The dealer may maintain his qualifications by attending approved requalification programs for a time period not to exceed four years. The dealer will be required to maintain his records of requalification for submission to the department for relicensing. The department will not maintain qualification data for persons that have not relicensed. The department reserves the right to require special examination(s) on new requirements or technology.

(8) A licensed dealer changing his employment to another company or business within a licensing period shall be required to submit to the department the license and any employee credentials for cancellation by the department. The dealer, by submission of a written request or application, may request the issuance of a new license. If the dealer paid the license fee, the department will issue the license. If a dealership or company originally employing the dealer paid the license fee, the department shall not reissue the dealer or the dealer's new employer. If the company paid for the licensing fee, the department will credit the fee to the company for issuance of another dealer's license by the department within the same licensing period. Provided that the license shall not be issued until the applicant passes the required written examination or is already a licensed dealer. Licenses and license fees shall not be transferable between licensing periods.

(9) A licensed dealer or employees supervised by the dealer shall only sell restricted use pesticides to other dealers, certified-licensed commercial, public utility, or governmental applicators, to non-commercial certified applicators, or to certified farm applicators or their credentialed family members or employees. The dealer or dealer's employees shall only sell to a certified applicator the pesticide or pesticides within the group or class of pesticides stated on the license or permit.

(10) Dealers are allowed to sell restricted use pesticides to persons possessing proper identification or credentials issued by the department. These credentials will state that the person is purchasing the pesticide under the name and license or permit number of a certified applicator and that the certified applicator supervises the use of the pesticide by that person. Sale of restricted use pesticides to any person other than certified applicators or persons with departmental credentials is illegal. Such sales to any person shall subject a dealer to immediate revocation of the license.

4.10.504 RECORDS (1) All pesticide dealers, including pharmacists, veterinarians and certified pharmacies shall be required to maintain shipping, purchase, or invoice records of all pesticide products received. These records must be retained for two (2) years.

(2) Each dealer, including pharmacists, veterinarians and certified pharmacies shall maintain a complete and accurate typed or printed record of all restricted use pesticides purchased and sold. These records must be retained for two (2) years.

(3) The sales record shall include for each individual sale of a restricted use pesticide:

- (a) the company name on the label;
- (b) the complete trade name or the EPA registration number;

- (c) the volume sold;
- (d) the license or permit number of the certified applicator or the dealer purchasing the restricted pesticide;
- (e) the date;
- (f) the name of the applicator, dealer, employee or family member purchasing the restricted pesticide;

(4) (a) Each dealer, including pharmacists, veterinarians and certified pharmacies selling restricted pesticides, upon request of the department, shall submit to the department written records providing the information in ARM 4.10.504(3). The department may also require the sales records of general use pesticides providing the information in ARM 4.10.504(3)(a), (b) and (c). The records shall be submitted within fourteen (14) calendar days of the request. The records shall be made on the standard forms provided by the department or on forms approved by the department.

(b) If no restricted or general use pesticides are sold during the time period requested by the department, this should be so documented to the department.

(5) (a) Dealers shall submit to the department an accurate typed or printed report of their sale of restricted and general use pesticides every five years. The report is due for every fifth calendar year by January 31 of the next year. The report shall include the total volume sold, the trade name, the company name and the EPA registration numbers or the type of formulation of each individual product for the fifth year only beginning in 1990 and thereafter every five years.

(b) Former subsection (5) (b) (p. 4-242, 6/30/86) has been transferred and redesignated as 4.5.113 ARM, DEALER RECORD REQUIREMENTS. The transfer is made because responsibility for such records has been shifted to the agricultural development division which administers the noxious weed management funding act.

(6) Records required of dealers, pharmacists, veterinarians and certified pharmacies shall be subject to inspection by authorized employees of the department at all business hours. Dealers shall be required to submit the records or a true and accurate copy of the records to the department upon written request.

(7) Dealers and retailers selling retail pesticides, as designated in ARM 4.10.502, are exempt from the record keeping and reporting requirements of this rule. Records of retail pesticides shall be maintained as required in ARM 4.10.502 (2).

4.10.505 VIOLATIONS (REPEALED)

SUB-CHAPTER 6 RULES FOR ISSUANCE, REVOCATION, OR DENIAL OF PESTICIDE LICENSES AND PERMITS

4.10.601 RULES OF PRACTICE (REPEALED)

4.10.602 GRANTING, RENEWING, AND DENYING LICENSES, CERTIFICATES, AND PERMITS (REPEALED)

4.10.603 REVOCATION OF LICENSES AND PERMITS (REPEALED)

4.10.604 PERMANENT INJUNCTION OR REVOCATION (REPEALED)

Sub-Chapter 7 Restriction of Pesticide Rules

4.10.701 GENERAL (1) The department hereby establishes the standards of restriction for pesticides to be registered, re-registered, sold, distributed, offered for sale, purchased, exchanged, bartered, given away, used, or applied in the state. Sections 80-8-201 (3) and 80-8-105 (2) (a), (b), and (3) of the Act allows the department to restrict pesticides to prevent damage or injury to:

- (a) persons, animals, or pollinating insects from the effect of drift or from careless application;
- (b) the environment;
- (c) plants, including forage plants;
- (d) wildlife; and
- (e) fish and other aquatic life.

These rules establish standards for requiring pesticides to be registered in the state, to be classified as either restricted or general use pesticides by the department and prohibits the sale of restricted pesticides by any person to another person who has not been certified by the department to purchase, use, or apply the pesticide. It shall be unlawful to make available for use or to use any pesticide, whether registered or not, classified for restricted use to any person other than a certified applicator except as other exempted by the Act or rules adopted thereunder.

4.10.702 REGISTRATION REQUIREMENTS (1) The department will classify a pesticide or one or more of its uses for general use if it determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions or in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment. The department will classify a pesticide or one or more of its uses for restricted use if it determines that without additional regulatory restrictions, the pesticide, when applied in accordance with its directions for use, warnings and cautions or in accordance with widespread and commonly recognized practice, may generally cause unreasonable adverse effects on the environment, including injury to the applicator. The department may include a requirement that the restricted pesticide shall be applied only by or under the direct or special supervision of a certified applicator or impose other restrictions such as type of applicator who may use the pesticide or the time and place that the pesticide may be used.

(a) If the department classifies a pesticide product or one or more uses of such products for restricted use because of a determination that the acute dermal or inhalation toxicity of the product presents a hazard to the applicator or other persons, the product must be applied for such uses only by or under the direct or special supervision of a certified applicator.

(b) If the department classifies a pesticide product or one or more uses of such products for restricted use because of a determination that its use without additional regulatory restrictions may generally cause unreasonable adverse effects on the

environment, the product must be applied for such uses only by or under the direct or special supervision of a certified applicator, or be subject to such other restrictions as the department may provide by rule.

(2) The Act (section 80-8-201 MCA) requires the department to accept for registration any pesticide registered under a federal act, if the applicant desiring to register a federally registered pesticide pays the annual registration fee and provides such registration information required by the department. The department, by adoption of this rule on restricted use pesticides and adoption of the agency's pesticide classification criteria, shall classify a pesticide as either a restricted or a general use pesticide. A federally registered pesticide which is classified either as a general or restricted use pesticide for which an applicant is applying for state registration shall be accepted, registered, and so classified by the department. Such registration and classification shall become effective upon issuance of a certificate for registration to the applicant. All persons selling, distributing, offering for sale, exchanging, giving away, bartering, using, or applying the pesticide shall be required to follow the label directions and labeling requirements. If the agency establishes additional registration restrictions on a pesticide, such restrictions shall be adopted and implemented by the department.

(3) The department hereby adopts the registration and labeling requirements as set forth in the Code of Federal Regulations Title 40, parts 152 and 156, effective as of February 23, 1996. A copy can be obtained from the Montana Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 (406-444-2944).

4.10.703 CLASSIFICATION OF PESTICIDES (REPEALED)

4.10.704 CHANGE IN CLASSIFICATION FROM GENERAL TO RESTRICTED USE (REPEALED)

4.10.705 WARNINGS AND PRECAUTIONARY STATEMENTS (REPEALED)

4.10.706 CONTENTS OF LABEL DIRECTIONS FOR USE (REPEALED)

4.10.707 STATEMENT OF USE CLASSIFICATION (REPEALED)

4.10.708 VIOLATIONS (REPEALED)

4.10.709 USE OF PESTICIDES ON PEST INFESTATIONS IN ALFALFA SEED CROPS (1) The pesticide Pirimor 50-DF (pirimicarb) is permitted for use on alfalfa seed as specified under the authority of Section 3(c)(7)(C) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Additionally, several pesticides registered for use in Montana under Section 24(c) of FIFRA for use on alfalfa seed only are covered by this rule. The use of these pesticide products is not permitted on fields producing alfalfa for livestock feed and no portion of the treated field, including seed, seed screening, hay forage or stubble, may be used for human food or animal feed.

(2) The current year's treated alfalfa seed crop may not be used or distributed for animal feed purposes such as cut for hay, green chop, pellets, meal, or stubble; nor can

grazing take place on the current year's treated alfalfa seed crops.

(3) Screenings or other crop byproducts shall not enter feed channels by distribution and/or direct use. All alfalfa seed screenings and/or crop byproducts that were treated with Pirimor 50-DF or any of the FIFRA Section 24(c) pesticides for alfalfa seed production only must be immediately removed from the feed market, and disposed of in such a manner that they cannot be distributed or used for feed or food purposes. The alfalfa seed conditioner shall keep records of all alfalfa seed screenings and their disposal (site, method, amount and type of material, date of shipment) and shall furnish these records to the department upon request. Treated alfalfa seed must not be used or distributed for human food (sprouting).

(4) All alfalfa seed treated with Pirimor 50-DF or any of the FIFRA Section 24(c) pesticides registered for use in alfalfa seed production only shall be tagged at processing plants and such tag shall state NOT FOR HUMAN CONSUMPTION AND/OR ANIMAL FEED. It shall be the grower's responsibility to notify the processing plants of any seed crops treated with Pirimor 50-DF or any of the FIFRA Section 24(c) pesticides for use in alfalfa seed production only.

(5) All usage, in addition to the requirements of this rule, shall be in compliance with the Pirimor 50-DF label or the FIFRA Section 24(c) labels for the pesticides registered for use in alfalfa seed production only.

Sub-Chapter 8

Rinsing and Disposing of Pesticide Containers

4.10.801 DEFINITION OF TERMS These definitions are intended to supplement all existing rules adopted under the Montana Pesticides Act, Title 80, chapter 8, MCA.

(1) "Empty pesticide container" means any pesticide container from which the pesticide contents have been removed by pouring, shaking, pumping, aspirating or by other means and in which no pesticide contents remain that can be practically removed by these or similar methods.

(2) "Pesticide container" means any package or packaging in which a pesticide is in contact with the inner surface. The term does not include any shipping material used to hold more than one pesticide container or a bulk container used for transporting or delivering a pesticide.

(3) "Rinsate" means any mixture of rinse material and the residual contents of an empty pesticide container that is produced in the process of rinsing an empty pesticide container.

(4) "Rinse material" means any liquid or other material permitted by the labeling or otherwise approved by the U.S. environmental protection agency or the department to rinse empty pesticide containers.

(5) "Rinsed pesticide container" means an empty pesticide container that has been triple or power rinsed or rinsed by equivalent procedures as described in ARM 4.10.803.

(6) "Visible residue" means any rinsate with an amber, milky or other coloration associated with a specific pesticide.

4.10.802 RINSING AND DISPOSAL REQUIREMENTS (1) These rules apply to

any person handling, using, rinsing or disposing of pesticide containers. All pesticide labeling requirements, including any rinsing requirements, and these rules must be complied with when preparing and handling any pesticide container for disposal, recycling, refilling, or returning to the dealer, distributor or registrant. If the label instructions for rinsing or disposal of a pesticide container are different from these rules, the more restrictive requirement must be followed.

4.10.803 RINSING EMPTY PESTICIDE CONTAINERS (1) All empty pesticide containers shall be triple or power rinsed or rinsed by equivalent procedures approved by the department except as exempted in (1)(a) and (b). Such rinsing shall occur within 48 hours of the time that the container is rendered empty. Containers should be rinsed immediately after being emptied and the rinsate used as diluent in pesticide applications.

(a) Aerosol containers, fiber drums with liners, paper, fiber and plastic bags, containers designated by label for refilling, water soluble containers and compressed gas cylinders are exempted from this rule. Rinsing instructions on the pesticide container label must be followed.

(b) Containers from retail pesticides labeled only for home, yard, and garden uses as set forth in ARM 4.10.502 are exempt from this rule. These containers should be rinsed according to the procedures of this rule.

(2) The following procedures are the standard for triple, power or equivalent rinsing:

(a) Triple rinse procedures:

(i) The minimum amount of rinse material for each rinse shall be based upon the container size as specified below:

<u>container size</u>	<u>amount of rinse material</u>
less than 5 gallons	1/4 of the container's volume
5 gallons or more	1/5 of the container's volume

(ii) The required amount of rinse material shall be added to the pesticide container. The lid or other closure device shall be secured and the container agitated to ensure contact of the rinse material with all inside surfaces.

(iii) The rinsate shall be poured from the container and the container allowed to drain for 30 seconds.

(iv) The rinse procedures shall be repeated a second and third time.

(v) The rinse procedure shall be repeated until no visible residue is present.

(b) Power rinse procedures:

(i) The minimum amount of rinse material shall be 1/2 the volume of the container.

(ii) The minimum pressure of the rinse material shall be 15 pounds per square inch.

(iii) The nozzle shall be capable of rinsing all inner surfaces of the container.

(iv) Rinsing shall continue until no visible residues are present.

(v) The container shall be drained for 30 seconds.

(c) Equivalent rinse procedures: Any person may apply for department approval of a procedure for rinsing pesticide containers. The application shall include:

(i) A narrative description of the procedure.

(ii) Laboratory analytical results that demonstrate that removal of residues is as effective as triple rinsing or power rinsing.

(iii) Documentation that the analytical methods are scientifically acceptable and results are statistically valid. This may include submittal of quality assurance/quality control documentation, policy and practices.

(iv) Information and data that illustrate that pesticide exposure to persons conducting the procedure is not greater than exposure from triple or power rinsing procedures.

(v) Information and data that illustrate that adverse effects to the environment are not greater than from triple or power rinsing procedures.

(vi) The department may deny or approve the request based upon the information from the applicant and from data and information from other sources. The department may also withdraw its approval should further information reveal that the procedure is not equivalent to accepted procedures, pesticide exposure is greater than previously believed or adverse environmental problems result.

4.10.804 USE OF RINSATES (1) Rinsates may be applied as pesticides provided that applicable label directions are followed for each registered pesticide in the rinsate.

(2) Rinsates may be used as a diluent in pesticide mixtures where:

(a) the pesticides in the rinsate and the mixture are the same or compatible;

(b) tank mixing is not prohibited by the pesticide labels;

(c) the application site is listed on each pesticide label.

(3) Disposal of rinsates is prohibited except as permitted by the label or by Title 75, chapter 10, MCA and rules adopted thereunder.

(4) Rinsates may be temporarily stored but shall not be stored longer than one year.

(a) The container(s) storing the rinsate must have the following information on a label attached to the container:

(i) The date that the rinsate was placed in the container;

(ii) the active ingredient(s) in the rinsate;

(iii) company name, trade name, formulation and environmental protection agency registration number for each product in the rinsate;

(iv) signal word; and

(v) name of responsible person(s).

(5) Rinsates must be used or disposed of in a manner that prevents any agricultural, environmental or human health problems.

4.10.805 DISPOSAL AND RECYCLING OF METAL, GLASS OR PLASTIC PESTICIDE CONTAINERS (1) All rinsed pesticide containers shall be punctured or rendered unusable; and, within 90 days, disposed of in a sanitary landfill as a solid waste or sent to a department approved recycler or reconditioner if allowed by the label.

(2) Empty pesticide containers not required to be rinsed shall be disposed of within 7 days, preferably within 48 hours, following procedures in ARM 4.10.806.

(3) Containers authorized by the label for refilling are exempted from this rule.

4.10.806 DISPOSAL OF OTHER TYPES OF EMPTY PESTICIDE CONTAINERS

- (1) Aerosol pesticide containers shall be handled in the following manner.
 - (a) The cap shall be replaced.
 - (b) The container shall be wrapped in absorbent material.
 - (c) The container shall be discarded in a sanitary landfill.
 - (d) Aerosol containers shall not be punctured, burned or incinerated.
- (2) Fiber drums with liners and paper or plastic bags shall be handled in the following manner:
 - (a) Clinging particles shall be loosened by shaking and tapping sides and bottom of the liner or bag and placed in application equipment.
 - (b) The drum and liner or bag shall be discarded in a sanitary landfill.
 - (3) Compressed gas cylinders shall be handled in the following manner:
 - (a) Label directions, precautions, and procedure for returning the container to the dealer, registrant or formulator shall be followed.
 - (4) Other pesticide containers not described in this rule must be disposed of according to the label directions.

4.10.807 BURNING OR INCINERATION OF PESTICIDE CONTAINERS (1)

Incineration or burning pesticide containers or the use of an unapproved incinerator to burn or incinerate pesticide containers is prohibited except when such burning or incineration is approved by the Montana department of health and environmental sciences.

4.10.808 HANDLING PESTICIDE CONTAINERS BEING RINSED, RECYCLED, RECONDITIONED, DISPOSED OR REFILLED (1)

- Any person rinsing or preparing a pesticide container for disposal, recycling, reconditioning or refilling must follow the personal protective procedures and precautions on the pesticide label. These may include use of non-absorbent gloves, coveralls, apron, hat and footwear; approved respiratory protection devices; and eye protection.
- (2) No person shall use, reuse, offer for sale, exchange or give away an empty or rinsed pesticide container for any purpose, except as allowed by these rules.
 - (3) Any person licensed, certified or permitted under the Montana Pesticides Act or persons that are required to possess such credentials shall be responsible for training, supervising and monitoring employees or any other person involved with the rinsing and/or disposal of pesticide containers. The responsibilities include educating and training employees or other persons on labeling precautions and directions; the rules contained in this sub-chapter; and appropriate measures to protect agriculture, human health and the environment.
 - (4) Empty or rinsed pesticide containers shall be stored within an enclosure that restricts entry by unauthorized persons. Transportation of empty or rinsed pesticide containers shall be in a manner that protects human health and the environment.

Sub-Chapter 9 Endrin

4.10.901 SALE AND USE OF ENDRIN FOR PALE WESTERN AND ARMY CUTWORM CONTROL (REPEALED)

4.10.902 VIOLATION (REPEALED)

4.10.903 ENDRIN (REPEALED)

Sub-Chapter 10 Civil Penalties

4.10.1001 DEFINITIONS As used in this part the following definitions apply:

(1) "Animal poisoning" means a pesticide exposure to humans, livestock or domestic and wild animals resulting in acute and/or chronic illness, harm or death normally verified respectively by a physician, a veterinarian or a recognized wildlife pathologist. This verification should include documentation either by a laboratory bioassay, analytical confirmation, or another department approved scientific method.

(2) "Exposure" means the process and/or result of introducing a pesticide by any method or route onto or into humans, livestock, animals, crops, plants or the environment. Entry into treated areas in violation of a restricted entry interval, failure to provide required protective equipment (PPE) or clothing, failure to provide required decontaminating facilities or failure to provide required facilities for care, storage or cleaning PPE or clothing constitutes exposure.

(3) "Harm" means the exposure due to the improper use or misuse of a pesticide by direct application or otherwise resulting from application or use, resulting in but not limited to:

(a) physical or biological acute, subacute or chronic pesticide damage, injury or poisoning to humans, livestock, animals, crops, plants or to the environment;

(b) pesticide residues that prevent the planting, harvesting production, grazing, consumption or sale of crops, livestock, plants or animals;

(c) contamination of potable drinking water or contamination of ground or surface waters or air exceeding state or federal standards.

(4) "Pesticide poisoning" means animal or plant poisoning which may result in discernible adverse effects on the physical structure, growth, population level, or reproduction rates of organisms verified by qualified animal or plant specialists in combination with either a laboratory bioassay, laboratory analytical confirmation or another department approved scientific method.

(5) "Plant poisoning" means a pesticide exposure to plants or crops resulting in the acute or chronic destruction, loss, reduction or damage to the plants, verified by either a recognized plant pathologist, botanist or a trained department pesticide specialist. This verification should include documentation from either a laboratory bioassay, a laboratory analytical confirmation or another department approved scientific method.

(6) "Proven exposure" in cases of misuse means:

(a) to establish the validity or authenticity of exposure by documentation of pesticide residues on or in humans, agricultural commodities or livestock by laboratory analysis or bioassay;

(b) documentation of exposure by other investigative or scientific methods including signs and symptoms caused by exposure to pesticides;

(c) documentation of entry by a person into a treated area in violation of a restricted entry interval;

(d) documentation of failure to provide protective equipment, clothing, decontamination facilities, or facilities for care, storage or cleaning of personal protective equipment required by a pesticide label.

(7) "Proven harm" in cases of misuse means to establish the validity or authenticity of exposure, harm or poisoning by demonstrating adverse effects through verification by a recognized animal, plant, human health, or pesticide specialist, which may include documentation of the pesticide by laboratory analytical or bioassay confirmations or other approved scientific methods.

(8) "Significant harm" means having a measurable or verified observation of adverse effect(s), on health, environment, agricultural crops or livestock.

4.10.1002 ENFORCEMENT (1) Whenever the department has reason to believe that a violation of Title 80, chapter 8, MCA or any adopted rule thereunder has occurred and the department finds it is in the public interest to assess a civil penalty, it may initiate a civil penalty action pursuant to the Montana Administrative Procedure Act.

4.10.1003 ABILITY TO STAY IN BUSINESS (1) Where a determination of the appropriate amount of the penalty must be made under 80-80-306 (5) (d), MCA the "effect on the person's ability to stay in business" will be considered when the charged persons submits bonafide financial information accompanied by appropriate documentary evidence. The charged person may request a reduction in a civil penalty or an alternate payment schedule.

4.10.1004 OTHER PENALTIES (1) If the nature of a particular enforcement proceeding so warrants, the department may, in the interest of judicial economy, combine a disciplinary proceeding under 80-8-211, MCA (suspension or revocation of licenses and permits) or other violations of the act or rules adopted thereunder with a proceeding under 80-8-306(5), MCA. However, any appeal from resulting disciplinary action against the license or permit or other violations, shall be reviewed pursuant to the procedure established by the Montana Administrative Procedure Act.

4.10.1005 PENALTY DETERMINATION (1) Each violation of the Montana OPesticides Act and/or rules adopted thereunder is considered a separate offense. Each offense is subject to a separate penalty not to exceed \$2,500, with the exception of farm applicators whose penalty cannot exceed \$500 for the first offense.

(2) The penalty matrixes in this rule establish the penalty for each offense that is a major violation or reoccurrence of a major violation. The values in parentheses establish the penalty for farm applicators possessing a permit. The gravity of the violation, the degree of care exercised and the degree of harm to health, environment, agricultural commodities, or livestock may decrease or increase the penalties listed below. The department shall have the option to select the most appropriate penalty and penalty value for each violation.

(3) Where a penalty is assessed for reoccurrence of a violation within two years of the first violation, the two year period will start on the date that the preceding violation occurred. All appeals procedures and rights to contest and a final order concluding the violation must be completed for the preceding violation(s).

(4) Penalties are assessed according to the following penalty matrix:

(a) misuse resulting in proven exposure or proven harm to:

Violation	1 st Offense	2nd Offense	3rd and Subsequent Offense
Humans or human health			
Proven exposure	\$ 500 (100)	\$ 1,000	\$ 2,500
Illness	1,000 (200)	2,500	2,500
Chronic illness or death	2,500 (500)	2,500	2,500
Agricultural Commodities			
Proven exposure	250 (50)	500	1,000
Reduced yield or price	750 (150)	1,500	2,000
Damage or residues prevent marketing	1,000 (200)	2,000	2,500
Destruction	2,000 (400)	2,500	2,500
Livestock			
Proven exposure	250 (50)	500	1,000
Illness or residues that prevent marketing of livestock or by-products	1,000 (200)	2,000	2,500
Death	2,500 (500)	2,500	2,500

(b) misuse resulting in proven harm to environment:

Surface or ground water			
Poisoning or harm to aquatic plants or animals	\$ 500 (100)	\$ 1,000	\$ 2,500
Domestic, livestock, or irrigation purposes or other beneficial uses affected	1,000 (200)	2,000	2,500
Residues equal or exceed state or federal standards	1,000 (200)	2,500	2,500
Soil			
Residues that prevent growth of plants	500 (100)	1,000	2,500
Structure or biota adversely affected	500 (100)	1,000	2,000
Animals			
Illness or harm	500 (100)	1,000	2,500
Death	1,000 (200)	2,000	2,500
Residues that prevent or restrict consumption by humans	1,000 (200)	2,000	2,500
Plants other than agricultural commodities			
Damaged, normal the following season	500 (100)	1,500	2,500
Damaged, abnormal the following season	1,000 (200)	2,000	2,500
Destroyed	2,000 (400)	2,500	2,500
Air			
Contaminated at or above state or federal health standards	1,000 (200)	2,500	2,500

(c) sale of a restricted pesticide to a person not certified or authorized to purchase restricted pesticides:

Sale of a restricted pesticide to a person not certified or authorized to purchase restricted pesticides	\$1,000 (100)	\$1,500	\$2,500
--	---------------	---------	---------

(d) use or sale of an unregistered pesticide:

General	1,000 (200)	2,000	2,500
Restricted	1,500 (300)	2,500	2,500
Canceled or suspended	1,500 (300)	2,500	2,500

(e) failure to maintain any individual pesticide application and sales records:

General use pesticides	250 (50)	500	1,000
Restricted use pesticides	500 (100)	750	1,500

(f) use of a pesticide without having obtained the required license or permit:

Commercial, government, public utility or non-commercial applicators or operators or farm applicators			
General	500	1,500	2,500
Restricted	1,000	2,000	2,500
Permitted farm applicator			
Restricted	250	1,000	2,000

(g) sale of a pesticide without having obtained the required license:

General	500 (100)	1,500	2,500
Restricted	1,000 (200)	2,000	2,500

(h) noncompliance with pesticide worker protection standards and labeling:

Misuse violations not causing proven exposure of humans, agricultural commodities or livestock; or proven harm to human health, commodities, livestock or the environment	\$ 250 (50)	\$ 500	\$1,000
Retaliation by an employer against workers or handlers	1,000 (200)	1,500	2,500
Failure to provide emergency assistance	1,500 (300)	2,000	2,500
Sale of misbranded pesticide not having the required worker protection label language	500 (100)	1,500	2,500

(i) noncompliance with pesticide ground water and environmental protection agency endangered species standards and labeling:

Misuse violations not causing proven exposure of humans, agricultural commodities or livestock; or proven harm to human health, commodities, livestock or the environment	\$ 250 (50)	\$ 500	\$ 1,000
---	-------------	--------	----------

(j) noncompliance with pesticide or pesticide container disposal, labeling or handling requirements and standards:

Misuse violations not causing proven exposure of humans, agricultural commodities or livestock; or proven harm to human health, commodities, livestock or the environment	\$ 250 (50)	\$ 500	\$1,000
Sale of a misbranded pesticide	500 (100)	1,500	2,500

(k) reoccurrence of any identical violation of this chapter (Title 80, chapter 8, MCA) within two years of the first violation excluding the major violations set forth above:

Type of Reoccurrence	1st Reoccurrence	2nd Reoccurrence	3rd Reoccurrence
Violations dealing with permits, licenses and/or reports	500	1,000	2,500
Violations dealing with general use pesticides	500	1,000	2,500
Violations dealing with restricted use pesticides	1,000	2,000	2,500
All other violations	500	1,000	2,500

4.10.1006 GRAVITY OF VIOLATIONS (1) The department, in determining the gravity of a major violation as set forth in 80-8-306 (5) (e), MCA, will consider certain factors. These factors are normally established by statute, rules, labeling and similar standards or requirements and will be documented to the violator. The factors set forth below are examples of standards that may be used. They are neither inclusive or necessarily additive in substance, order presented, or number.

- (a) a restricted use pesticide is involved versus a general use pesticide;
- (b) a more toxic pesticide is involved;
- (c) an antidote to the pesticide is not available;
- (d) pesticide residue levels exceed established federal tolerances or action levels;
- (e) pesticide residue levels exceed established federal or state standard or health guidelines for surface or ground water;
- (f) the extent, type, kind, nature and severity of exposure or harm to human health, commodities, environment, or livestock;
- (g) the person's history of compliance with the Montana Pesticides Act, rules, and department orders illustrates continued noncompliance or disregard for compliance;

(h) whether ambient air levels of a pesticide exceed state or federal standards or guidelines;

(i) timeliness in correcting a violation;

(j) cooperation during an inspection or investigation;

(k) multiple violations are present;

(l) violations that have potential to result in exposure or harm;

(m) timely and voluntary settlement of damages;

(n) the person has knowledge of the act or rules which were violated.

4.10.1007 DEGREE OF CARE - MISUSE (1) For purposes of these rules implementing civil penalties, conduct that falls within the definition of misuse under 80-8-306 (5) (e) (i), MCA shall constitute misuse per se, without regard to the standard of care exercised. However, the charged party may present evidence of standard of care exercised, which may be considered by the department for purpose of determining and mitigating the amount of penalty [80-8-306(5)(d), MCA]. Such evidence will be evaluated and categorized as follows:

(a) misuse which occurs through little or no negligence of the charged party may mitigate the penalty;

(b) misuse which occurs through negligence may have a neutral effect in either mitigating or enhancing the penalty;

(c) misuse which occurs as a result of gross negligence may enhance the penalty.

(2) In further determining the applicability of the above categories, the following definitions will apply:

(a) no negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care;

(b) negligence means a failure to exercise reasonable care;

(c) reasonable care means that degree of care demonstrated with a knowledge of the nature and probable consequences of the act or omission that a prudent man would ordinarily exercise in acting in his own concerns;

(d) gross negligence means knowing, intentional or reckless conduct.

4.10.1008 DEGREE OF CARE - VIOLATIONS OTHER THAN MISUSE (1) For purposes of section 80-8-306 (5) (b) (ii) through (vi), MCA a violation is deemed to have occurred if the conduct falls under any of the enumerated categories, without regard to the standard of care exercised. However, the department may consider evidence thereof for purposes of determining and mitigating the amount of penalty. To the extent they are applicable, the department will evaluate the standard of care in the same manner as is stated for determining misuse under ARM 4.10.1007.

4.10.1009 NONCOMPLIANCE WITH PESTICIDE WORKER PROTECTION STANDARDS AND LABELING (1) For purposes of administering civil penalties for noncompliance with worker protection standards, the department hereby adopts the worker protection statements and worker protection standard as set forth in the Code of Federal Regulations, Title 40, part 156, subpart K and Title 40, part 170, revised as of July 1, 1998. A copy can be obtained from the Montana Department of Agriculture,

Agricultural Sciences Division, PO Box 200201, Helena, MT 59620-0201, (406) 444-2944.

(2) Failure to comply with the worker protection standard and associated labeling requirements is a violation of the Montana Pesticides Act and is subject to civil penalties pursuant to 80-8-306, MCA.

(a) when the worker protection standard is referenced on a pesticide label pursuant to 40 , Part 156, subpart K, persons using the pesticide must comply with the worker protection statements and the worker protection standard. Failure to comply constitutes use of a pesticide in a manner inconsistent with the label.

(b) any pesticide that is labeled for use in the production of agricultural plants on an agricultural establishment as defined in 40 170.3, shall be labeled with the worker protection statements set forth in 40 Part 156, subpart K. A pesticide not so labeled is misbranded. It is a violation for any person to distribute, sell, or offer for sale or deliver for transportation or transport in intrastate commerce any pesticide that is misbranded, and such violation is subject to a civil penalty pursuant to 80-8-306, MCA.

4.10.1010 NONCOMPLIANCE WITH PESTICIDE GROUND WATER AND ENVIRONMENTAL PROTECTION AGENCY ENDANGERED SPECIES STANDARDS AND LABELING (1) The following are considered violations:

(a) failure to comply with label or labeling directions relating to ground water or endangered species requirements including requirements in bulletins referenced by labels;

(b) failure to comply with administrative rules requiring containment, spill reporting, spill cleanup, or emergency response plans; or

(c) failure to comply with ground water specific management plans adopted as administrative rules pursuant of Title 80, chapter 15, MCA.

(2) For the purpose of determining civil penalties, any such violations shall constitute misuse. If a misuse violation results in proven exposure of humans, agricultural commodities, livestock, or proven harm to human health, agricultural commodities, livestock, or the environment, the amount of a civil penalty may be determined by using the penalty matrix established for 80-8-306 (5) (e) (i), MCA. Other violations will be subject to civil penalties established in ARM 4.10.1005 (4) (i) of the civil penalty matrix.

4.10.1011 NONCOMPLIANCE WITH PESTICIDE OR PESTICIDE CONTAINER DISPOSAL, LABELING OR HANDLING REQUIREMENTS AND STANDARDS (1) The following are considered violations:

(a) failure to comply with label directions for disposal of a pesticide;

(b) failure to comply with ARM 4.10.801 through 4.10.808 (Rinsing and Disposing of Pesticide Containers);

(c) failure to comply with pesticide label directions for handling such as application instructions, storage, protective clothing or equipment, precautionary statements, restrictions, re-entry intervals, mixing and loading instructions and others; or

(d) distribution, sale, or offering for sale or delivering for transportation, or transport in intrastate commerce between points in the state any pesticide that is not labeled as required by ARM 4.10.702.

(2) For the purpose of determining civil penalties, violations in (1) (a) through (d) shall constitute misuse. If a misuse violation results in proven exposure of humans, agricultural commodities, or livestock, or proven harm to human health, agricultural commodities, livestock, or the environment, the amount of a civil penalty may be determined by using the penalty matrix established for 80-8-306 (5) (e) (i), MCA. All other violations under this rule will be subject to civil penalties established in ARM 4.10.1005 (4) (j) of the civil penalty matrix.

4.10.1012 REMEDIAL ACTION IN LIEU OF CIVIL PENALTIES (1) A person subject to a civil penalty or charged with a violation may submit a written application to conduct remedial action (80-8-306) (3), MCA) in lieu of all or part of a civil penalty. The department will consider remedial actions that exceed the requirements of statute, rules or orders and that:

(a) correct harm caused by pesticides to human health, agricultural commodities, livestock, or the environment;

(b) prevent the occurrence of harm; and

(c) benefit the public.

(2) The department will consider applications upon receipt of a written application or plan that describes in detail the remedial action, procedures, costs, the benefits of the remedial action, responsible persons, dates and schedules.

(3) The department may require that the persons submit written confirmation upon satisfactory completion of the action.

(4) Upon demonstration by the charged person that remedial actions are completed as approved by the department, the civil penalty or a portion thereof may be dismissed.

Sub-Chapter 11

Pesticide Reporting, Cleanup and Containment

4.10.1101 DEFINITION OF TERMS These definitions apply to all rules adopted under the Montana Pesticides Act, Title 80, chapter 8, MCA.

(1) "Appurtenances" means all valves, pumps, fittings, pipes, hoses, metering devices and mechanical devices which are connected to a pesticide storage container or are used to transfer a material into or out of a storage container.

(2) "Bulk pesticide" means any pesticide which is transported or held in an individual container in undivided quantities of greater than 55 U. S. gallons liquid measure or 100 pounds net dry weight.

(3) "Dry pesticide" means any pesticide which is in solid form.

(4) "Liquid pesticide" means any pesticide in liquid form.

(5) "Operational activities" means transferring, loading, unloading, mixing, repackaging and refilling pesticides.

(6) "Permanent storage facility" or "PSF" means a facility or location where any primary containment capable of storing more than 500 U.S. gallons or 4,500 pounds of formulated bulk pesticides is in-service for more than 14 consecutive days. Primary containment capable of being moved and not in-service at a single site for more than 14 days is not a PSF. PSF will include primary containment and secondary containment.

(7) "Precipitation" means rain, snow, sleet or hail.

(8) "Primary containment" means a dedicated container or vessel effectively designed and constructed to contain a pesticide. Application equipment is excluded.

(9) "Secondary containment" means a device or an area or structure designed, constructed and maintained to hold or confine or prevent a discharge of pesticides from primary containment and appurtenances.

(10) "Spill" means a release, leak, discharge, disposal or escape of pesticides or pesticide mixtures into the environment, whether accidentally or not, including the discarding or abandonment of pesticide containers, but excludes the use or disposal of pesticides or pesticide containers in a manner consistent with approved labels and in compliance with the Montana Pesticides Act and the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

4.10.1102 GENERAL SPILL CLEANUP, REPORTING AND CONTAINMENT REQUIREMENTS (1) All persons shall contain, confine and clean up spills of pesticides or pesticide mixtures.

(a) an immediate response to pesticide spills should be undertaken according to local emergency operations plans; and responsible persons can, where appropriate, contact the local emergency operations jurisdiction or the state 24-hour number for disaster and emergency services at 406-444-6911.

(2) All persons shall report to the department within 48 hours spills occurring as a result of their use of pesticides or spills of pesticides in facilities or from equipment under the control of that person.

(a) spills confined within secondary containment are exempt from the reporting requirement.

(b) spills of pesticides not exceeding an aggregate amount of 5 U.S. gallons or 100 U.S. dry pounds are exempt from reporting. The aggregate amount includes formulated product, diluent and other additives.

(c) the reporting requirements include, but are not limited to the following information:

(i) the specific location of the pesticide spill, including legal description, landmark references or address. The location shall be described in terms that are adequate for the department or emergency responders to locate the spill;

(ii) the manufacturer's name and complete trade name of the product or products spilled;

(iii) the amount of pesticide spilled; and

(iv) the name, address and telephone number of the person reporting the spill or the person who is the primary contact.

(3) All pesticides or contaminated material recovered from a spill shall be placed in containers.

(a) The container (s) must have the following information on a label attached to the container:

(i) date the material was recovered into the container (s);

(ii) the active ingredient (s), trade name and formulation;

(iii) environmental protection agency registration number for each product;

(iv) signal word; and

(v) name, address and telephone number of the responsible person.

(b) contained materials must be stored, recycled, used or disposed of in accordance with label instructions, rinsing and disposing of pesticide containers as per ARM 4.10.801, and all state and federal disposal regulations.

(4) All persons not subject to ARM 4.10.1103 through 4.10.1109, constructing a mixing and loading or containment facility may follow the bulk pesticide containment rules or the guidelines in the publication "Designing Facilities for Pesticide and Fertilizer," David W. Kammel, MidWest Service, or similar construction guidelines.

(5) Persons using water to mix or load pesticides or to clean or rinse pesticide equipment or containers shall use a backflow prevention device or procedures, such as an air gap or check valve, to prevent contamination of all water sources. Any person using a public water supply must comply with ARM 17.38.301 and 17.38.305.

(6) Any person that causes pesticide contamination of soil or water through faulty, careless or negligent mixing, loading, transferring, or storage of pesticides may be required by the department to construct containment for the control of pesticide spills. Implementation of this provision does not preclude the department from initiating other remedial or enforcement actions authorized by Title 80, chapter 8, MCA.

(7) Persons, whether licensed or not, who use or sell pesticides are responsible for remediating spills caused during their use or sale of pesticides or caused by persons under their supervision or employment.

(8) The department encourages all persons mixing, loading or transferring pesticides, and using or cleaning pesticide application equipment to have an emergency spill response plan as set forth in ARM 4.10.1108.

(9) Upon the written request by a person, the Montana department of agriculture may approve a deviation from this rule if the deviation maintains the intent of the rule. This request shall describe the proposed deviation and reason for the deviation.

4.10.1103 GENERAL REQUIREMENTS AT PERMANENT STORAGE FACILITIES

(1) Any person constructing or operating a new PSF or making an addition to an existing PSF must comply with ARM 4.10.1101 through 4.10.1109.

(2) A person who operates a PSF prior to January 15, 1999, must, within four years, bring their facility into compliance with ARM 4.10.1101 through 4.10.1109.

(3) Mobile containers such as railcars or tank trucks used to transfer pesticide to or from a PSF must use catch basins that may be temporary and portable, to recover spills from connections.

(4) Protection against vandalism or unauthorized access shall be provided for at a PSF. Valves on primary containment shall be closed, locked or otherwise secured when not in use.

(5) Floor drains are not permitted in facilities designed to contain spills of pesticide and pesticide mixtures unless:

(a) complete and reasonable access for routine inspections is provided for the entire system.

(b) all parts of the drain and its systems are constructed above the normal ground plane of the immediate surrounding area.

(c) the floor drain shall be for recovery purposed only.

(d) discharge outlets, valves and gravity drains on existing secondary containment that do not comply with this rule shall be sealed upon adoption of these rules.

4.10.1104 PRIMARY CONTAINMENT STANDARDS FOR BULK PESTICIDES

(1) Formulated bulk pesticides in undivided quantities of more than 500 U.S. gallons or 4,500 pounds, stored for more than 14 consecutive days, shall be in primary containment meeting the following requirements:

(a) primary containment and appurtenances shall be constructed, installed and maintained to prevent a spill of pesticide.

(b) primary containment and appurtenances shall be of materials which are resistant to corrosion, puncture and cracking.

(c) materials used in the construction or repair of primary containment and appurtenances may not be of a type which react chemically or electrolytically with stored pesticides in a way which may weaken the storage container or appurtenances, or create a risk of discharge.

(d) materials used for valves, fittings and repairs shall be compatible with the materials used in the primary containment.

(e) primary containment and appurtenances shall handle all operation stresses, taking into account static head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the primary containment and appurtenances may be subject in the foreseeable course of operations.

(f) every primary containment connection, except a safety relief valve and conservation vent connection, shall be equipped with a manual shut-off valve.

(g) appurtenances shall be adequately supported to prevent sagging and possible breakage because of gravity and other forces encountered in the ordinary course of operation.

(h) primary containment and appurtenances shall be protected against reasonably foreseeable risks of damage by moving vehicles or objects.

(i) primary containment, not in-service for longer than two years shall be thoroughly cleaned with all hatches secured and all valves or connections secured. Vents shall be functional. An integrity test shall be performed before primary containment can be placed back in service.

(j) primary containment shall be anchored or secured or elevated to prevent instability or flotation as a result of liquid accumulations within the secondary containment.

(k) primary containment may not be filled beyond the capacity for which it is designed, taking into account the density of the liquid being stored and thermal expansion during storage.

(l) primary containment retaining liquid shall be equipped with a liquid level gauging device by which the level of liquid in the storage container can be readily and safely determined. A gauging device is not required if the liquid in the container can be measured safely by other means. The gauging device shall be secured to protect against breakage or vandalism which may result in a discharge. External sight gauges must be equipped with an automatic shut-off valve.

(m) primary containment used for liquid pesticide shall be equipped with a conservation vent which opens and closes within the designed pressure limits of the container.

(n) all primary containment shall be labeled in accordance with the labeling

requirements set forth in the Code of Federal Regulations Title 40, parts 152 and 156 (July 1, 1996), which are hereby incorporated by reference. Copies of 40, parts 152 and 156 are available upon request to the Montana Department of Agriculture, PO Box 200201, Helena, MT 59620-0201. The registered product label shall be attached to primary containment in a prominent location. The label shall be complete and legible.

4.10.1105 SECONDARY CONTAINMENT AT PERMANENT STORAGE FACILITIES (1) Any individual primary containment capable of storing more than 500 U.S. gallons or 4,500 pounds and in-service for more than 14 consecutive days and its associated appurtenances must be placed within secondary containment that meets the following requirements:

(a) secondary containment not protected from precipitation shall contain at least 125% of the volume of the largest primary containment within the secondary containment plus the displacement of all other primary containment, appurtenances, and other items which cause displacement within the secondary containment.

(b) secondary containment located indoors or under a roof to prevent accumulation of precipitation shall contain at least 110% of the volume of the largest primary containment plus the displacement of all other primary containment, appurtenances, and other items which cause displacement within the secondary containment.

(c) the walls and floors of secondary containment shall be constructed of steel, poured reinforced concrete, precast concrete modules, solid masonry, synthetic liners, or other materials that will provide secondary containment. Floors and walls constructed of clay, natural soil, natural soil clay mixtures or clay bentonite mixtures are prohibited. Materials used in the secondary containment shall be chemically compatible with the pesticides being stored. A written conformation of compatibility from the manufacturer and kept on file at the PSF or at the nearest office from which the PSF is administered is recommended.

(d) walls shall withstand a full hydrostatic head of any spill, and shall be sealed to prevent leakage.

(e) piping through the outside walls of a secondary containment is prohibited.

(f) the secondary containment floor shall slope to a liquid tight collection point or sump that allows spilled or deposited material to be easily removed. Any pump used for recovering materials from the secondary containment shall be manually activated.

(g) synthetic liners shall be installed under the supervision of a qualified representative of the manufacturer, a contractor certified by the manufacturer, or a certified engineer. All seams shall be tested and repaired, if necessary, in accordance with the manufacturer's recommendation. A record regarding installation date, life expectancy and chemical compatibility must be kept.

(h) a prefabricated secondary containment shall be composed of a rigid prefabricated basin having a base and walls constructed of steel or synthetic materials which are resistant to corrosion, puncture and cracking.

(i) the prefabricated secondary containment shall withstand all foreseeable loading conditions, including the primary containment load and a full hydrostatic head of any spill. Multiple basins shall be connected in a manner which assures an adequate transfer of discharge between basins.

(j) discharge outlets, valves or gravity drains shall comply with

ARM 4.10.1103 (5).

(k) secondary containment for pesticides must be separate from containment for fertilizer, but they may have a common wall or partition.

4.10.1106 OPERATIONAL ACTIVITIES FOR BULK PESTICIDES AT A PSF

(1) Operational activities must meet the following standards:

(a) if operational activities are conducted within secondary containment, the containment shall comply with ARM 4.10.1105 and must withstand the weight of any vehicles and storage containers used within the secondary containment.

(b) a person conducting operational activities outside of secondary containment shall use at a minimum, temporary or portable catch basins under fittings or connections during pesticide transfers. An attendant must be present during all operational activities.

4.10.1107 RECOVERY, USE OR DISPOSAL OF SPILLS, DEBRIS, PRECIPITATION AND WASH WATER AT A PERMANENT STORAGE FACILITY

(1) Precipitation or other liquids or debris shall not be allowed to accumulate in secondary containment to the point where required containment capacity is not maintained. Spills, debris, precipitation or wash water in secondary containment shall be recovered immediately if the capacity is reduced to less than required by ARM 4.10.1105 (1) (a) and (b).

(2) The department must be immediately notified of any spills outside of the secondary containment in accordance with ARM 4.10.1102 (2).

(3) Recovered pesticides and contaminated materials shall be labeled, and stored, recycled, used or disposed of in accordance with ARM 4.10.1102 (3).

4.10.1108 SPILL RESPONSE PLAN (1) A written emergency response plan shall be prepared for a PSF.

(2) The plan shall include, but not be limited to, the following elements:

(a) the names and telephone numbers of the persons and agencies who are to be contacted in the event of a spill.

(b) a material safety data sheet for each pesticide stored at the facility and a copy of its label and labeling.

(c) the procedures used for controlling and recovering a spill for each type of pesticide stored. These procedures should be kept current.

(d) an inventory of all pesticides and their total volume at the PSF. An inventory shall be updated at least monthly and when a shipment of greater than 500 U.S. gallons or 4,500 pounds of product in undivided quantities is received or dispatched.

(e) the type of emergency equipment and supplies and their location to protect personnel, to contain, recover and store in the event of a spill.

(f) at least one copy of the emergency response plan shall be located at the PSF and a second copy maintained off the premise to ensure its availability in case of an emergency. A responsible person shall be knowledgeable of the locations of plans.

4.10.1109 RECORDS, INSPECTION AND MAINTENANCE RECOMMENDATIONS

(1) Any person operating a PSF should maintain written records of all inspections and maintenance of the PSF.

(2) All appurtenances and primary containment holding bulk pesticides should be inspected weekly for damage and leakage. Secondary containment should be inspected at least monthly during the use season for cracks or other damage to the containment structures which may permit discharge outside the containment structures.

(3) Regular maintenance of PSF and secondary containment should be performed to ensure that the integrity of the sites is maintained.

Sub-Chapter 12

1080 Livestock Protection Collars

4.10.1201 GENERAL (1) The department hereby establishes rules regarding the registration and restricted use of 1080 livestock protection collars [hereafter referred to as collar(s)] to control coyotes (*Canis latrans*) that depredate sheep and goats.

(2) Registrants of the collar, dealers selling the collar and applicators using the collar, shall be subject to future labeling restrictions and requirements as may be prescribed from time to time by the agency and/or the department.

4.10.1202 REGISTRATION (1) Registration of the collars for sale or distribution in the state shall be limited to federal registrants of the collar.

(2) The collars shall not be sold, transferred, transported, given, or entrusted to the care of any person by the registrant who is not authorized, properly licensed or permitted, by the department.

(3) Only the registrant or the collar manufacturer are authorized to fill collars with 1080 solution. Certified applicators are not authorized to fill collars.

4.10.1203 DEALER SALES (1) The Montana department of livestock and/or a federal agency such as the United States department of agriculture (USDA) may become licensed dealers for the sale and distribution of the collars or in the event one of these agencies chooses not to become a licensed dealer, the department may designate a dealer who meets standards established by the department. The dealer shall be required to maintain an inventory record of collars purchased, sold, distributed, given away, or entrusted. The record shall include each purchase of the collars by the dealer, each individual's name and license or permit number to whom the dealer sells the collars, and the number of collars remaining in the dealer's stock.

(2) The dealer shall not sell, give away, or entrust any collars to other than trained and certified-licensed or permitted pesticide applicators authorized to use collars.

4.10.1204 APPLICATOR CLASSIFICATIONS AND REQUIREMENTS

(1) Individuals who desire to use collars shall have to be qualified and certified as either a certified-licensed commercial or government applicator or a permitted farm applicator. All individuals desiring to become certified shall be required to attend a training course sponsored or approved by the department and pass an examination.

(2) The training course shall include, but is not limited to: (a) Training in the safe handling and attachment of collars.

(b) Training in disposal of punctured or leaking collars, contaminated animal remains, contaminated vegetation and soil, and contaminated clothing.

(c) Instructions for practical treatment of 1080 poisoning in humans and domestic animals.

(d) Instructions on record keeping.

(e) Familiarization with Montana pesticide laws and rules.

(f) Familiarization with collar labeling.

(3) Individuals desiring to become certified shall be required to pass a written examination based on materials and training provided by the department. Applicants for a certified-license must pass the examination with a score of eighty percent (80%), and applicants for a special use permit must pass with a score of seventy percent (70%). Applicants failing the examination the first time shall not be allowed to retake the examination for seven (7) days after notification. Applicants failing the examination a second time may retake the examination fifteen (15) days after notification by certified mail. Applicants failing the examination a third time shall not be allowed to retake the examination until the next licensing period beginning January 1 the next year and shall attend another approved training course. Examinations may be retaken at any reasonable time after the time limitations expressed for the first and second examinations at the department's Helena office, or the applicant may make arrangements for examination or reexamination at other locations in the state at the convenience and approval of the department.

(4) Applicators maintaining their license for four consecutive licensing periods shall be required to requalify for licensing prior to every fifth licensing period. Applicator requalification shall be accomplished by passing an examination or by attending an acceptable applicator training course approved by the department. An applicator requalifying for licensing by attending a pesticide training course shall be required to have the government agency sponsor of the training course submit to the department a written verification of the applicator's attendance and an agenda of topics and speakers. The standards for requalification shall be the same as those required for initial certification. The department retains the right to approve or disapprove such training courses relative to meeting the qualification for relicensing. The department may also require applicators to pass an examination and/or attend training during any licensing period on new major pesticide technology which applies to the applicator's classification.

(5) All individuals who have attended a training course and having passed the written examination on the use of the collars, will be certified under one of the following classifications:

(a) certified-licensed government applicator-regulatory pest control-predator - livestock protection collar;

(b) certified-licensed commercial applicator-- agricultural pest control--vertebrate--livestock protection collar;

(c) permitted or certified farm applicator-livestock protection collar.

(6) Applicants desiring certification for use of collars and individuals certified to use the collars shall have to meet and comply with other applicable licensing requirements as established by departmental rules.

(7) Livestock protection collar applicators shall have in their possession the "Technical Bulletin for the Livestock Protection Collar" and must use collars in accordance with Section 3 (Use Restrictions) and Section 4 (Supervision, Inspection of 1080 Livestock Protection Collars). The "Technical Bulletin for the Livestock Protection

Collar" by the Montana department of agriculture and Montana department of livestock effective as of February 23, 1996, contains the use restrictions that must be followed during application of the livestock protection collars and is available from the Montana Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 (406-444-2944) or the Montana Department of Livestock, P.O. Box 202001, Helena, MT 59620-2001 (406-444-2023).

4.10.1205 USE RESTRICTIONS OF COMPOUND 1080 LIVESTOCK PROTECTION COLLARS (REPEALED)

4.10.1206 SUPERVISION, INSPECTION OF 1080 LIVESTOCK PROTECTION COLLARS (REPEALED)

4.10.1207 RECORDS (REPEALED)

4.10.1208 VIOLATIONS (REPEALED)

Sub-Chapter 13 reserved

**Sub-Chapter 14
Rules of Registration and Use of M-44 Sodium Cyanide
Capsules and M-44 Devices**

4.10.1401 GENERAL (1) The department hereby establishes rules regarding the registration and restricted use of M-44 cyanide capsules in M-44 ejector devices to control certain wild canids: coyotes (Canis latrans); red fox (Vulpes vulpes); gray fox (Urocyon cinereoargenteus); and wild dogs that depredate livestock and poultry.

(2) Registrants of the sodium cyanide capsules and applicators using the capsules in the M-44 devices, sodium cyanide spring-loaded ejector mechanisms, shall be subject to future labeling restrictions and requirements as may be prescribed from time to time by the agency and/or the department.

4.10.1402 REGISTRATION (1) Registration of the cyanide capsules for sale or distribution in the state shall be limited to federal registrants of the cyanide capsules.

(2) Cyanide capsules shall not be sold, transferred, transported, given, or entrusted to the care of any person who is not authorized, properly licensed or permitted, who is not under the supervision, control of, or monitored by the registrant and the department.

4.10.1403 DEALER SALES (1) The Montana department of livestock and/or a federal agency such as the United States department of agriculture (USDA) may become licensed dealers for the sale and distribution of the cyanide capsules or in the event one of these agencies chooses not to become a licensed dealer, the department may designate a dealer who meets standards established by the department. Each dealer shall be required to maintain an inventory record of capsules purchased, sold,

distributed, given away, or entrusted. The record shall reflect each and every purchase of the capsules by the dealer, each individual's name and license or permit number to whom the dealer sells the capsules, and the number of capsules remaining in the dealer's stock.

(2) Dealers shall not sell, give away, or entrust any cyanide capsules to other than trained and certified-licensed or permitted pesticide applicators.

(3) Dealer sales and distribution to licensed or permitted applicators shall be limited to fifty (50) capsules per purchase. This limit may be exceeded on a case by case approval by the department if the applicator can document/justify to the department the need to exceed the fifty

(50) capsule per purchase limit. Federal or state agencies providing capsules to their employees are not limited by this numeral restriction.

4.10.1404 APPLICATOR CLASSIFICATIONS AND REQUIREMENTS

(1) Individuals who desire to use cyanide capsules in M-44 devices shall have to be qualified and certified as either a certified-licensed or permitted applicator. All individuals desiring to become certified shall be required to attend a training course sponsored or approved by the department. The training course shall include:

(a) Training in the safe use and handling of the capsules and the M-44 ejector device.

(b) Training in the proper use of the antidote kit.

(c) Instructions and practical demonstration on the proper placement of the M-44 ejector device.

(d) Familiarization with all applicable federal, state, and local laws and regulations on the cyanide capsules and M-44 devices.

(e) Information on labels and labeling, biology of wild canids, environmental considerations, disposal and storage.

(f) Instructions on required record keeping.

(2) Individuals desiring to become certified shall be required to pass a written examination. Applicants for a certified-license must pass the examination with a score of eighty percent (80%), and applicants for a special use permit must pass with a score of seventy percent (70%). Farm applicators shall not be allowed to qualify by oral examination. Applicants failing the examination the first time shall not be allowed to retake the examination for fifteen (15) days after notification of failure by certified mail. Applicants failing the examination a second time may retake the examination thirty (30) days after notification by certified mail. Applicants failing examination a third time shall not be allowed to retake examination until the next licensing period beginning January 1 the next year. Examinations may be retaken at any reasonable time after the time limitations expressed for the first and second examinations at the department's Helena office or the applicant may make arrangements for examination or reexamination at other locations in the state at the convenience and approval of the department.

(3) Requalification. Applicators maintaining their license for four consecutive licensing periods shall be required to requalify for licensing prior to every fifth licensing period. Applicator requalification shall be accomplished by passing an examination or by attending an acceptable applicator training course approved by the department. An applicator requalifying for licensing by attending a pesticide training course shall be

required to have the sponsor of the training course submit to the department a written verification of the applicator's attendance and an agenda of topics and speakers. The department retains the right to approve or disapprove such training courses relative to meeting the qualification for relicensing. The only training courses that will be reviewed for approval will be those attended by the applicator during the last half of the third licensing period or the fourth licensing period of a qualification period. The department may also require applicators to pass an examination during any licensing period on new major pesticide technology which applies to the applicator's classification.

(4) All individuals who have attended a training course and having passed the written examination on the use of the capsules in M-44 devices will be certified in one of the following classifications:

(a) certified-licensed government applicator--regulatory pest control - predator - sodium cyanide (M-44);

(b) certified-licensed commercial applicator--agricultural pest control--vertebrate - sodium cyanide (M-44);

(c) permitted or certified farm applicator - sodium cyanide (M-44).

(5) Certified-licensed commercial M-44 applicators are exempt from the financial responsibilities required in ARM 4.10.101 through 4.10.103. These applicators shall comply with all the requirements in ARM 4.10.104 through 4.10.108 on liability.

(6) Applicants desiring certification for use of cyanide capsules and individuals certified to use the capsules shall have to meet and comply with other applicable licensing requirements as established by departmental rules.

(7) Applicators using the M-44 device shall have in their possession the Use Restriction Bulletin (Training Manual for M-44 Applicators) and must use the M-44 device in accordance with the section titled "Use Restrictions for M-44 Cyanide Capsules". The Use Restriction Bulletin (Manual for M-44 Applicators) printed by the Montana department of agriculture February 23, 1996, contains the use restrictions that must be followed during the application of the M-44 device and is available from the Montana Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 (406-444-2944).

4.10.1405 USES OF CYANIDE CAPSULES AND M-44 EJECTOR (REPEALED)

4.10.1406 SUPERVISION, INSPECTION, AND REMOVAL OF CYANIDE CAPSULES AND M-44 DEVICES (REPEALED)

4.10.1407 RECORDS (REPEALED)

4.10.1408 VIOLATIONS (REPEALED)

Sub-Chapter 15 Pesticide Terminology Rule

4.10.1501 DEFINITION OF TERMS These definitions apply to all regulations rules adopted under the Montana Pesticides Act, Title 80, chapter 8, MCA unless specified differently by statute or individual rules.

(1) "Accident" means an unexpected, undesirable event caused by the use or presence of a pesticide that adversely affects man or the environment.

(2) "Act" means the Montana Pesticides Act, as amended, Title 80, chapter 8, part 2 MCA; and other legislation supplementary thereto and amendatory thereof.

(3) "Actions" means some procedure or decision taken or to be taken by the department against a person committing, having committed, or allegedly committed a prohibited act or violation of the Act.

(4) "Acute dermal LD₅₀" means a single dose of a substance, expressed as milligrams per kilogram of body weight, that is lethal to 50% of the test population of animals within a specified time period under specified test conditions as prescribed in the Registration Guidelines, 40 CFR 162.40 et seq., and adopted by the department.

(5) "Acute LC₅₀" means a concentration of a substance, expressed as parts per million parts of medium, that is lethal to 50% of the test population animals under test conditions as specified in the Registration Guidelines, 40 CFR 162.40 et seq., and adopted by the department.

(6) "Acute oral LD₅₀" means a single orally administered dose of a substance, expressed as milligrams per kilogram of body weight, that is lethal to 50% of the test population of animals under test conditions as specified in the Registration Guide lines, 40 CFR et seq., and adopted by the department.

(7) "Acute toxicity" means the property of a substance or mixture of substances to cause adverse effects in an organism through a single short-term exposure.

(8) "Agency" means the United States environmental protection agency.

(9) "Agricultural commodity" means any plant or part thereof, or animal or animal product produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animal.

(10) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(11) "Applicant" means a person who applies for a registration pursuant to 80-8-201, MCA; or a person who applies for a license pursuant to 80-8-203, MCA; 80-8-205, MCA; 80-8-207 MCA; 80-8-213 MCA; or a person who applies for a permit pursuant to 80-8-209 MCA; of the Act.

(12) "Application form" means the form approved by the department which must be completed in its entirety by persons requesting a registration, license, certified-license or permit.

(13) "Application of a pesticide" means the placement of a pesticide at or on the site where the pest control or other response is desired.

(14) "Authorized agent or representative" means any authorized employee of the department or an individual authorized by the department to act as an official representative of the department.

(15) "Calibration of equipment" means measurement of dispersal or output of application equipment and adjustment of such equipment to control the rate of dispersal, and droplet or particle size of a pesticide dispersed by the equipment.

(16) "Cancellation of license, permit, certificate" means the process by which the department invalidates a license, permit, or certificate.

(17) "Certificate" means the authorizing document issued by the department to a person who has qualified to use a restricted use pesticide(s), or in the case of registration, the authorization to sell, offer for sale, or distribute a pesticide in the state.

(18) "Certificate period" means one complete calendar year, January 1 through December 31, for which an individual has been issued a certificate by the department even though the person was not issued a certificate for the complete calendar year.

(19) "Certification" means the determination by the department that an individual is competent and thus authorized to use or supervise the use of restricted use pesticides.

(20) "Certified applicator" means any individual who is certified and licensed or issued a special use permit to use or supervise the use of any restricted use pesticide covered by his certification.

(21) "Chronic toxicity" means the property of a substance or mixture of substances to cause adverse effects in an organisms upon repeated or continuous exposure over a period of at least one-half the lifetime of that organism.

(22) "Classification of applicator" means the process by which commercial, government, public utility, non-commercial, and farm applicators are classified by the department according to type of operation, types or classes of pesticides use, or where and how the pesticide is to be used or applied.

(23) "Classification of pesticides" means the process by which the department under specific standards classifies a pesticide into general use or restricted use.

(24) "Commercial applicator certified license" means an authorization issued by the department to an individual to use and apply restricted use and general use pesticides for which he is qualified.

(25) "Commercial applicator license" means an authorization issued by the department to an individual to use and apply general use pesticides for which he is qualified.

(26) "Common exposure route" means a likely way (oral, dermal, respiratory) by which a pesticide may reach and/or enter an organism.

(27) "Compatibility" means that property of a pesticide which permits its use with other chemicals without undesirable results being caused by the combination.

(28) "Competent or competency" means properly and legally qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

(29) "Cooperative agreement" means an agreement of the department with any other local, county, state, other state, or federal agency or department for the purposes of carrying out the Act, for securing uniformity of rules, and for establishing reciprocal agreements on accepting licenses, permits, or certificates under certain conditions and standards.

(30) "Credential" means an authorizing document issued to an individual to sell pesticides under the supervision of a licensed dealer; or farm applicator, family members, or employees allowing them to purchase or use restricted use pesticides under the supervision of the farm applicator.

(31) "Degradation product" means a substance resulting from the transformation of a pesticide by physical, chemical, or biochemical means.

(32) "Denying, denial" means the process by which the department refuses to register a product, issue a license, grant a permit, or certify an individual.

(33) "Department" means the Montana department of agriculture.

(34) "Direct supervision" means the act or process whereby the use of a pesticide is made by a competent person acting under the verifiable instructions and supervision of a licensed or certified applicator, who has provided detailed guidance to the competent person for proper use of the pesticide; who has made provisions for contact in the event he is needed; and who is responsible for the actions of that person.

(35) "Director" means the director of the Montana department of agriculture or any officer or employee of the department to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

(36) "Disposal" means the process of discarding pesticides or pesticide containers in a permanent manner so as to avoid endangering or injuring public health, or causing unreasonable adverse effects on the environment.

(37) "Domestic application" means the application of a pesticide directly to humans or pets, application of a pesticide in, on, or around all structures, vehicles, or areas associated with household or home life, patient care areas of health related institutions or areas where children spend time, including but not limited to:

a. gardens, non-commercial greenhouses, yards, patios, houses, pleasure marine craft, mobile homes, campers and recreational vehicles, non-commercial campsites, home swimming pools, and kennels;

(b) articles, objects, devices, or surfaces handled or contacted by humans or pets in all structures; vehicles or areas listed above;

(c) patient care areas of nursing homes, mental institutions, hospitals, and convalescent homes;

(d) education, lounging, and recreational areas of preschools, nurseries, and day camps.

(38) "Drift" means movement of a pesticide during or immediately after application or use through air to a site other than the intended site of application or use.

(39) "Efficacy" means the capacity of a pesticide product when used according to label directions to control, kill, or induce the desired action in the target pest.

(40) "Examination" means a method or examining process in writing, which is used for determining competency of an individual prior to the issuance of a license, permit, or certificate. The licensing examination may include specific types of examinations to determine competency on required subjects.

(41) "Examination score" means the percentile score a person received on each and every examination taken.

(42) "Farm applicator" means a person applying pesticide to his own crops or land. In the case of restricted use pesticides, a person certified as a farm applicator to use or

supervise the use of a restricted use pesticide for purposes of producing any agricultural commodity on lands owned, rented, or leased by him or his employer.

(43) "Federal act" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, by the Federal Environmental Pesticide Control Act of 1972 and other legislation supplementary thereto and amendatory thereof.

(44) "Fee" means the money payable by a person to the department for training, registration, licensing or permitting.

(45) "Final printed labeling" means the printed label and the labeling which will appear on or will accompany the pesticide product.

(46) "Financial interest" means the economic or monetary interest, compensation, or commission a person has invested or receives from an applicator business or operation other than hourly or monthly wages.

(47) "Financial responsibility" means proof of a commercial pesticide applicator, licensed or certified-licensed, that he has obtained and will maintain either an insurance policy, surety bond, or escrow account for his liability relating to the use and application of pesticides in the monetary amounts and conditions established by the department.

(48) "Forest" means a concentration of trees and related vegetation in non-urban areas, sparsely inhabited by and infrequently used by humans, and characterized by natural terrain and drainage patterns.

(49) "Front panel" means that portion of the label of a pesticide product that is ordinarily visible to the purchaser under the usual conditions of display for sale.

(50) "General use pesticides" means a pesticide that is classified for general use under specific criteria promulgated by the department and/or the agency.

(51) "Conditions of use for general use pesticides" means:

(a) A commercial pesticide applicator may use and apply general use pesticides for which he is licensed anywhere within the state.

(b) A licensed pesticide operator, as an employee of a licensed commercial applicator, may use and apply general use pesticides for which the applicator is licensed and under his direct supervision within a 100 miles of the licensed applicator; beyond 100 miles, special supervision shall be required.

(c) An unlicensed employee of a licensed commercial applicator may use and apply general use pesticides only under the special supervision of the licensed applicator or licensed operator employed by the licensed applicator.

(52) "Government applicator certified license" means an authorization issued by the department to an individual to use and apply restricted use and general use pesticides for which he is qualified.

(53) "Government applicator license" means an authorization issued by the department to an individual to use and apply general use pesticides for which he is qualified.

(54) "Group or class of pesticides" means those pesticides grouped or classified as related pesticides as established by the department. Such grouping or classes will primarily be based upon the chemical makeup or uses of pesticides.

(55) "Hazard" means the likelihood that use of a pesticide would result in an adverse effect on man or the environment in a given situation.

(56) "Host" means any plant or animal on or in which another lives for nourishment, development, or protection.

(57) "Immediate container" means that container which is directly in contact with the pesticide or device.

(58) "Inhalation LC₅₀" means concentration of a substance, expressed in milligrams per liter of air or parts per million parts of air, that is lethal to 50% of the test population of animals under test conditions as specified in the Registration Guidelines, 40 CFR 162.40 et seq., and adopted by the department.

(59) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(60) "Lateral movement" (in soils) means to transfer through soil. This is generally in a horizontal plane from the original site of application or use.

(61) "Leach" means to undergo the process by which pesticides in the soil are moved into a lower layer of soil or are dissolved and carried through soil by water.

(62) "License" means an authorization to apply or sell pesticides, issued by the department to a person who has qualified by meeting the conditions and standards of the Act and rules adopted thereunder.

(63) "Licensing period" means a complete calendar year, January 1 through December 31, for which a person has been issued a license by the department (even though the person was not issued a license for the complete calendar year).

(64) "Metabolite" means any substance produced in or by living organisms by biological processes and derived from a pesticide.

(65) "Misuse" means the use, handling, or release of a pesticide by a person in a manner inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing, and loading rules or pesticide and container disposal rules (see 80-8-306 (5) (e) (i), MCA).

(66) "Modification" means the process of altering, limiting, or modifying a license, permit, or certificate of a person by the department.

(67) "Mutagenic" means the property of a substance or mixture of substances to induce changes in the genetic complement of either somatic or germinal tissue in subsequent generations.

(68) "Non-commercial certified applicator" means an individual who cannot be classified as a commercial, public utility, or government certified applicator or who cannot be classified as a private applicator but desires the use of restricted use pesticides. A certified non-commercial application may only use restricted use pesticides on lands owned, rented, or leased by his employer or himself.

(69) "No discernible adverse effect" means no adverse effect observable within the limitations and sensitivity specified in the Registration Guidelines, 40 CFR. 162.40 et seq., and adopted by the department.

(70) "Non-target organisms" means a plant or animal other than the one against which the pesticide is applied.

(71) "Oncogenic" means the property of a substance or mixture of substances to produce or induce benign or malignant tumor formations in living animals.

(72) "Order" means a lawful directive of the department directing a person to perform or cease a specific action or operation.

(73) "Ornamental" means trees, shrubs, and other plantings in and around habitations generally, but not necessarily, located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial, and institutional buildings.

(74) "Outdoor applications" means any pesticide application or use that occurs outside enclosed man-made structures or the consequences of which extends beyond enclosed man-made structures, including but not limited to pulp and paper mill water treatments and industrial cooling water treatments.

(75) "Permit" means a special use document, which may be referred to as a certificate, issued by the department to a farm applicator to purchase, use or apply restricted use pesticides.

(76) "Permit period" means a complete calendar year, January 1 through December 31, for which a person has been issued a permit or certificate by the department (even though the person was not issued a permit or certificate for the complete calendar year).

(77) "Practical knowledge" means the possession of pertinent facts and the ability to use them in dealing with specific problems and situations.

(78) "Administrative Procedure Act" means the Montana Administrative Procedure Act, Title 2, chapter 4, MCA. and rules promulgated thereunder.

(79) "Protect health and the environment" means protection against any unreasonable adverse effects on the environment.

(80) "Protective equipment" means clothing or any other materials or devices that shield against unintended exposure to pesticides.

(81) "Qualification period" means the period of time for which a person is qualified for a license, certificate, or permit.

(82) "Records" means a procedure whereby a person is required to record, maintain, reveal, or submit certain data and information, required by the Act.

(83) "Re-entry" means the action of entering an area or site at, in, or on which a pesticide has been applied.

(84) "Registered" means a product which is labeled as a pesticide or intended for use as a pesticide which has been approved by the department for sale, exchange, or distribution, for use or application in the state.

(85) "Registration guidelines" means the guidelines and standards used and published by the agency and adopted by the department in reviewing, approving, modifying, denying, suspending, or canceling the registration of a pesticide formulation (40 CFR. 162.40 et seq., and adopted by the department).

(86) "Regulated pest" means a specific organism considered by a state or federal agency to be a pest requiring regulatory restrictions, regulations, or control procedures in order to protect the host, man, and/or his environment.

(87) "Renewal or renewing" means the process and procedure by which a person renews a registration, license, permit, or certificate.

(88) "Requalification or requalify" means a process by which an individual becomes eligible by reexamination and/or retraining for a license, permit, or certificate.

(89) "Residue" means the active ingredient(s), metabolite(s), or degradation product(s) that can be detected in the crops, soil, water, or other component of the environment, including man, following the use of the pesticide.

(90) "Restricted use pesticide" means a pesticide that is classified for restricted use under specific criteria promulgated by the department and/or the agency.

(91) "Conditions for use for restricted use pesticides" means: A commercial pesticide applicator may use and apply restricted use pesticides for which he is certified-licensed anywhere within the state

(a) a licensed applicator or operator, as an employee of a certified-licensed applicator, may use and apply restricted use pesticides for which the certified-licensed applicator is licensed, only within 100 miles of the certified-licensed applicator while under his direct supervision;

(b) a licensed applicator or operator, as an employee of a certified-licensed applicator, may use and apply restricted use pesticides for which the certified-licensed applicator is licensed, only with 100 miles of the certified-licensed applicator while under his direct supervision;

(c) a licensed applicator, or operator working beyond the 100 mile limit, may use or apply restricted use pesticides only under the special supervision of a certified-licensed applicator.

(92) "Revocation or revoking" means the process or procedure of the department to temporarily and/or permanently rescind a person's license, permit, or certificate.

(93) "Sale" means to sell, wholesale, offer or expose for sale, exchange, barter, or give away a pesticide or pesticide formulation in the state.

(94) "Special supervision" means that a certified-licensed applicator or licensed applicator must be physically present at the time of use and application of a pesticide.

(95) "Standard" means the measure of knowledge and ability which must be demonstrated as a requirement for certification, or some criteria, measurement limitation or condition imposed by the department on a pesticide, process, license, permit, or certificate.

(96) "Storage" means the process whereby a person stores a pesticide or pesticide containers so as to prevent unreasonable adverse effects on the environment and protect the storage life of the product.

(97) "Subacute dietary LC₅₀" means a concentration of a substance expressed as parts per million in feed, that would be lethal to 50% of the test population of animals under test conditions as specified in the Registration Guidelines, 40 CFR. 162.40 et seq., adopted by the department.

(98) "Subacute toxicity" means the property of a substance or mixture of substances to cause adverse effects in an organism upon repeated or continuous exposure within less than one-half the lifetime of that organism.

(99) "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.

(100) "Teratogenic" means the property of a substance or mixture of substances to produce or induce functional deviations or developmental anomalies, not heritable, in or on an animal, embryo, or fetus.

(101) "Toxicity" means the property of a substance or mixture of substances to cause any adverse effects.

(102) "Unreasonable adverse effects on the environment" means unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(103) "Use" means the handling or release of a pesticide by a person in a manner that is consistent with the label or labeling and in compliance with department rules on

application, storage, mixing, loading, pesticide and container disposal and required supervision.

(104) "Use-dilution" means a dilution specified on the label or labeling which produces the concentration of the pesticide for a particular purpose or effect.

(105) "Use pattern" means the manner in which a pesticide is applied and includes the following parameters of pesticide application:

- (a) target pest;
- (b) crops or animals treated;
- (c) application site;
- (d) application technique, rate, and frequency.

(106) "Violation" means an act or action not in conformity with the Act or rules adopted thereunder.

(107) "Volatility" means the property of a substance or substances to convert into vapor or gas without chemical change.

Sub-Chapter 16 reserved

Sub-Chapter 17 Rodenticide Surcharge and Grants

4.10.1701 DEFINITIONS (REPEALED)

4.10.1702 DEALER RECORDS AND SURCHARGE ASSESSMENT (REPEALED)

4.10.1703 GRANT APPLICATION PROCEDURE (REPEALED)

4.10.1704 GRANT APPLICATION CONTENT AND FEASIBILITY (REPEALED)

4.10.1705 LEGAL REQUIREMENTS (REPEALED)

4.10.1706 PROJECT EVALUATION (REPEALED)

4.10.1707 REPORTING AND MONITORING PROCEDURES (REPEALED)

4.10.1708 APPLICABILITY DATE (REPEALED)

Sub-Chapter 18 Pesticide Disposal Program

4.10.1801 GENERAL (1) The department may establish standards and procedures for administering a waste pesticide and pesticide container collection, disposal and recycling program.

(2) The purpose and intent of these rules is to:

(a) reduce the amount of stored waste pesticides and empty pesticide containers in Montana;

- (b) dispose of waste pesticides and empty pesticide containers in a manner safe to the environment and human health;
- (c) facilitate exchange of useable pesticides among pesticide applicators in Montana; and
- (d) permit the department to issue contracts to qualified entities who will conduct the operational aspects of a waste pesticide disposal program.

4.10.1802 DEFINITIONS (1) "Acceptable pesticide" means a pesticide approved by the department for the disposal program. An acceptable pesticide shall also mean an empty pesticide container that contained an acceptable pesticide.

(2) "Contractor" means an entity or entities contracted by the department to conduct the disposal program.

(3) "Disposal program" means the collection of pesticides and pesticide containers for disposal, recycling or use by methods and procedures approved by the department.

(4) "Participant" means a person or persons authorized by the department to submit acceptable pesticides to the disposal program.

(5) "Recyclable" means a pesticide container rinsed according to label directions as addressed in the code of federal regulations (40 CFR156.10).

(6) "Unacceptable pesticide" means a pesticide that is not permitted to be incinerated according to state or federal regulations or an empty pesticide container that contained an unacceptable pesticide.

(7) "Exchangeable pesticide" means a pesticide in a sealed, unopened container authorized by the disposal program for exchange from one person to another.

4.10.1803 STANDARDS FOR DISPOSAL PROGRAM OPERATION

(1) The disposal program may accept:

- (a) acceptable pesticides;
- (b) recyclable pesticide containers;
- (c) exchangeable pesticides.

(2) The disposal program shall not accept:

- (a) nonpesticide materials;
- (b) unacceptable pesticides.

(3) Contractors conducting the disposal program must meet qualifications that include but are not limited to the following items:

(a) registered as a hazardous waste generator with the Montana department of health and environmental sciences (DHES) and possess a hazardous waste identification number issued by the United States environmental protection agency (EPA). DHES registration and an EPA hazardous waste identification number shall not be required for a contractor involved solely with recyclable pesticide containers and exchangeable pesticides;

(b) possess or subcontract only with transporters that possess all necessary federal and state permits, licenses and registrations required for the transportation of hazardous wastes;

(c) certify that employees conducting the disposal program meet occupational safety and health administration safety and training requirements in the code of federal regulations (29 CFR 1910.120).

(4) The department may issue request for bid proposals (RFPs) and enter into written contracts with contractors to conduct the operational aspects of the disposal program. The department may require that entities responding to the RFP provide specific information on methods and procedures that the contractors will use in conducting a disposal program. This information provided by the contractor may include but is not limited to:

(a) a collection site preparation and restoration plan to provide for safe transfer of acceptable pesticides, exchangeable pesticides, and recyclable pesticide containers including provisions for site selection, protection of the environment and public health, and restoration of the site to its original condition;

(b) evidence of an established quality assurance/quality control program used by the contractor;

(c) provisions for development of site specific health and safety plan(s) for the chosen collection site(s);

(d) written documentation provided to the department before collection that the acceptable pesticides collected under the disposal program will be accepted by an EPA permitted disposal facility for incineration;

(e) methods for management of collected acceptable pesticides from the collection site to the disposal facility in compliance with Title 16, chapter 44, Administrative Rules of Montana;

(f) provisions for inspection and monitoring of the disposal program by the department;

(g) attendance at organizational meeting(s) prior to collection day(s);

(h) provisions for written documentation of collection activities provided to the department within established time schedules which may include:

(i) an itemized list of pesticide products by trade/generic name and amounts collected;

(ii) shipping manifests.

(5) The department shall establish criteria for awarding the disposal program contract(s). Selection criteria shall include but not be limited to:

(a) ability to perform service;

(b) related experience or similar waste disposal projects;

(c) references;

(d) federal Resource Conservation and Recovery Act (RCRA) compliance record;

(e) clarity and completeness of bid proposal;

(f) cost.

4.10.1804 DISPOSAL PROGRAM OPERATION (1) The department or its designated agent may conduct outreach and educational activities to inform the public about the functions of the disposal program and may conduct these activities in cooperation with the Montana state university extension service, local governments, the contractor(s) and others.

(2) The department may target the operational activities of the disposal program to regions or areas within the state during each fiscal year.

(3) Collection site(s) shall be selected by the contractor.

(4) The department will establish minimum criteria for a site to qualify as a collection

site.

(5) The department establishes the following procedures for disposal of acceptable pesticides.

(a) Persons intending to participate in the disposal program must make application to the department or the department designee on forms provided by the department. Information provided on the form must include but is not limited to:

- (i) brand name of the pesticide if present on label or known;
- (ii) active ingredient of the pesticide if present on label or known;
- (iii) EPA registration number or the United States department of agriculture (USDA) registration number, if present;
- (iv) quantity of each pesticide;
- (v) container size, composition, condition;
- (vi) applicant's name, address and telephone number.

(b) Persons who submit applications to the program must receive written approval from the department or the department designee to participate in the program.

(c) Prior to the collection day, the department shall provide the participant with a form listing the acceptable pesticides approved for disposal. This form will serve as a bill of lading and must be in the possession of the participant during transport of the acceptable pesticides to the collection site. This form will also serve to transfer ownership of the pesticide(s) from the participant to the contractor by a pesticide product release statement on the form.

(d) Participants in the disposal program must transport acceptable pesticide products to the collection site according to the Montana Pesticides Act and United States department of transportation regulations.

(e) A participant may assign a designee to transport the participant's acceptable pesticides to the collection site only if the designee is approved by the department during preregistration.

(f) Ownership of acceptable pesticides approved for disposal will be transferred from the participant to the contractor at the collection site.

(6) The department establishes the following procedures for recycling of pesticide containers.

(a) Persons intending to participate in the disposal program for the purpose of recycling pesticide containers must make application to the department on forms provided by the department. Information provided on the form must include but may not be limited to:

- (i) brand name of the pesticide if present on label or known;
- (ii) active ingredient of the pesticide if present on label or known;
- (iii) EPA registration number or United States department of agriculture registration number, if present;
- (iv) number and size of each pesticide container;
- (v) container composition;
- (vi) applicant's name, address and telephone number.

(b) Recyclable pesticide containers must be rinsed according to label directions as addressed in the code of federal regulations (40 CFR 156.10).

(c) The contractor shall inspect each container. The contractor must not accept any container that in the judgement of the contractor has any visible residue.

(d) A form completed by the department following review of the participant's application will list containers approved for recycling under the disposal program. A copy of this form will be returned to the participant and must be in the participant's possession during transport of the containers to the collection site and must be provided to the contractor at the collection site.

(7) The department establishes the following procedures for the exchange of exchangeable pesticides:

(a) a pesticide may be exchanged or transferred from one person to another for the purpose of using the pesticide according to label directions. The pesticide offered for exchange must be:

- (i) registered or meet provisions of 80-8-201(9)(a) or (b), MCA; and
- (ii) in the original, labeled, unopened sealed container.

(b) owners of exchangeable pesticides must apply to the department or department designee and provide information on a department form according to ARM 4.10.1804(5)(a);

(c) persons wanting to receive exchangeable pesticides must provide their name, address, telephone number and pesticides wanted to the department. Persons wanting pesticides classified as restricted use must be licensed to use restricted use pesticides by the department;

(d) the department or department designee will match donors to users;

(e) transfer of ownership of exchangeable pesticides may occur during scheduled pesticide disposal collections or through other arrangements approved by the department.

(f) the department may require the pesticide offered for exchange to be analyzed for label claim.

4.10.1805 DISPOSAL PROGRAM COLLECTION PRIORITIES (1) The department may set priorities for the type and amount of acceptable pesticides collected under the disposal program. Criteria for setting the type and amount of acceptable pesticide collected may include but are not limited to:

- (a) funding available to operate the disposal program;
- (b) registration status of acceptable pesticides (e.g., canceled/suspended pesticides may have priority over presently registered pesticides);
- (c) toxicity;
- (d) hazard to human health or the environment;
- (e) condition of the pesticide container.

(2) The department may set priorities for which portions of the disposal program under ARM 4.10.1804(5), (6) and (7) will be conducted based on funding and personnel resources that are available to operate the disposal program.

4.10.1806 FEES (1) Participants in the disposal program must pay a fee of \$1.00 per pound for disposal of acceptable pesticides in which the total quantity is less than or equal to 200 pounds. The minimum charge for participation in the program will be \$5.00.

(2) Participants in the disposal program who dispose of total quantities of acceptable pesticides greater than 200 pounds must pay a fee of \$1.00 per pound for

the first 200 pounds and \$.50 per pound for additional amounts over 200 pounds.

(3) The department may elect to accept pesticides containing dioxins into the disposal program at a higher fee to the participant.

(4) Participants who submit recyclable pesticide containers to the program must pay a fee of \$2.00 per container.

(5) Participants who receive an exchangeable pesticide under ARM 4.10.1804(7) shall pay a fee of \$5.00 for each container with a net content of less than or equal to 1 gallon or 10 pounds and \$10.00 for each container with a net content of greater than 1 gallon or 10 pounds. Fees charged to participants who receive exchangeable pesticides can be lowered at the discretion of the department if the established fee is higher than the retail value of the exchangeable pesticide.

(6) Applicators licensed by the department shall be given a monetary credit if they are a participant in the disposal program. The credit must be used during the certification period for farm applicators or the licensing period for dealers, commercial applicators, commercial operators and government applicators in which the fee is paid;

(a) farm applicators shall receive a one time credit of \$15.00 during the farm applicator's certification period.

(b) commercial applicators shall receive an annual credit of \$10.00 for each licensing period that the applicator is licensed. Commercial applicators shall receive an annual credit of \$15.00 for the first two (2) commercial operators operating under their license for each licensing period the operator is licensed. A credit of \$5.00 shall be received for each additional commercial operator operating under the applicator's license for each licensing period the operator is licensed;

(c) government agencies shall receive an annual credit of \$10.00 for each licensing period that each applicator is licensed for the first four licensed applicators. A credit of \$10.00 shall be received for each additional applicator for each licensing period that the applicator is licensed. The total credit must not exceed \$280.00; and

(d) dealers shall receive an annual credit of \$10.00 for each licensing period that the dealer is licensed.

4.10.1807 LIABILITY (1) The department in the operation of the disposal program does not assume ownership of any pesticide products or pesticide containers accepted under the disposal program nor does the department accept liability for disposal.

(2) The contractor assumes ownership of all pesticide products and pesticide containers collected under the disposal program.

(3) As provided in 80-8-111, MCA, participants may not be subject to an administrative or judicial penalty as a result of participation in the disposal program.

4.10.1808 TERMINATION OF RULES (REPEALED).

